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## ADDENDUM

Document 00910

### ADDENDUM NO. 2

Date of Addendum: 3/24/2025

PROJECT NAME: Task Order Contract for Professional Landscape Architectural Services

PROJECT NO: F-000675

SUBMITTAL DATE: March 27, 2025 (There is no change to the Submittal Date)

FROM: City of Houston, General Services Department  
900 Bagby, 2nd Floor, City Hall Annex  
Houston, Texas 77002  
Attn: Jessica Bacorn, Project Manager

TO: Prospective Respondents

This Addendum forms a part of the RFQ Documents and will be incorporated into the Contract, as applicable. Insofar as the original RFQ published documents are inconsistent, this Addendum governs.

### CONTRACTING REQUIREMENTS

1. In the RFQ, Document No. 6, replace document in its entirety with attached Document No. 6 - Task Order Contract for Professional Landscape Architectural Services (Standard) Version: 02-21-2025.
2. In the RFQ, Document No. 7, replace document in its entirety with attached Document No. 7 - Task Order Contract for Professional Landscape Architectural Services (Federal) Version: 02-21-2025.

### CLARIFICATIONS

3. In the SOQ, Section 4.4 Respondent's TOC Experience and Section 4.6 Experience of TOC Program Manager, preferred experience would cover all phases of the project.

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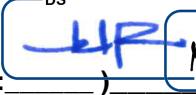
## ADDENDUM

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4. In the SOQ, projects may be used in multiple sections.
5. In the SOQ, privately funded project experience will be accepted and evaluated.

END OF ADDENDUM NO. 2

JR  
for

DS  
 DocuSigned by:  
(LJ: \_\_\_\_\_) *Richard Vella*  
A597721A7EB34B6...

Richard Vella  
Assistant Director  
Real Estate, Design & Construction Division  
General Services Department

DATED: 3/24/2025

00910-2  
02-22-2022

**6 - TASK ORDER CONTRACT FOR  
PROFESSIONAL LANDSCAPE ARCHITECTURAL SERVICES (STANDARD)**  
**Version: 02-21-2025**

THIS Agreement For Professional Landscape Architectural Services (Agreement) is made on the date countersigned by the City Controller, by and between the **CITY OF HOUSTON, TEXAS** (the "City"), a Texas Home Rule City of the State of Texas principally situated in Harris County, and \_\_\_\_\_, (the "Consultant"), a Texas \_\_\_\_\_.

**1. PARTIES**

**1.1. ADDRESSES**

1.1.1. The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows

**CITY:**

Director of General Services Department \_\_\_\_\_  
or Designee \_\_\_\_\_  
P O Box 61189 \_\_\_\_\_  
Houston TX 77208 \_\_\_\_\_

The Parties agree as follows:

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### **1.3. PARTS INCORPORATED**

1.3.1. The above-described exhibits are incorporated into this Agreement.

### **1.4. CONTROLLING PARTS**

1.4.1. If a conflict among the sections and exhibits arises, the exhibits control over the sections.

1.4.2. If a conflict among the Agreement and Task Order(s) arises, the Agreement controls over the Task Order(s).

**1.5. SIGNATURES**

1.5.1. The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

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By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Tax ID: \_\_\_\_\_

**ATTEST/SEAL:**

**CITY OF HOUSTON, TEXAS**

Signed by:

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City Secretary

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Mayor

**APPROVED:**

**COUNTERSIGNED BY:**

---

Director, General Services  
Department

---

City Controller

**APPROVED AS TO FORM:**

**DATE COUNTERSIGNED:**

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Sr. Assistant City Attorney  
L.D. File No. \_\_\_\_\_

## 2. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set out below:

- 2.1. **"Additional Services"** services completed by Consultant in support of a Project that are not part of Basic Services, but are included in Article 3 of this Agreement and as further described in the Task Order(s).
- 2.2. **"Basic Services"** Services completed by the Consultant in support of a Project, included in Article 3 of this Agreement and as further described in the Task Order(s).
- 2.3. **"City"** is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.4. **"City Engineer"** is the engineer appointed by the General Services Department to fulfill the role.
- 2.5. **"Construction Contractor"** means the construction contractor to whom the City has awarded all or part of a construction contract for a Project.
- 2.6. **"Construction Cost"** is defined in Article 5.
- 2.7. **"Consultant"** is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.8. **"Contract Documents"** all of the graphic and written information prepared or assembled by the Consultant for communicating the design and for administering the bidding and construction of a Project. And as further described in Article 3 of this Agreement.
- 2.9. **"Director"** means the Director of the General Services Department or his or her designee.
- 2.10. **"Documents"** means reports, charts, analyses, maps, letters, tabulations, exhibits, notes, models, photographs, specifications, AutoCAD and PDF files of all drawings and plans, and other submittal documents obtained by or prepared by the Consultant as instruments of its services under this Agreement.
- 2.11. **"Effective Date"** is the date this Agreement comes into force and shall be the date the City Controller countersigns it.
- 2.12. **"Maximum Total Construction Cost"** is the specific amount as defined in Task Order(s) that may not be exceeded by any estimate of Construction Cost for a Project by the Consultant without the express written approval of the Director.
- 2.13. **"MWBE"** is defined as Minority and/or Woman Business Enterprise as more clearly defined in Chapter 15, Article V of the City of Houston Code of Ordinances.
- 2.14. **"OBO Director"** means the Director of the Mayor's Office of Business Opportunity or of a successor department or such other person as may be designated from time to time by the Mayor.
- 2.15. **"Program"** means all those quantitative and/or qualitative requirements for a Project that must be met or satisfied by the design for a Project.
- 2.16. **"Project"** as identified in Task Order(s).
- 2.17. **"Project Schedule"** the schedule of project activities and events, showing initiation point, duration, and ending points in a format approved by the Director. The schedule will indicate time to be allowed

for reviews by the City staff. A Project Schedule shall be drafted by Consultant in consultation with the Director, approved by the Director, and updated monthly at the time of invoice submittal. The durations must be consistent with the durations set out in Task Order(s).

- 2.18. **"Reimbursable Expense"** is defined in Article 7.
- 2.19. **"Subcontract Cost"** means the ordinary and reasonable cost of subcontracts made by the Consultant and approved by the Director for the principal purpose of obtaining the professional services of others in connection with the performance of any service under this Agreement.
- 2.20. **"Substantial Completion"** is that point in the construction of a project or designated portion thereof where the City Engineer certifies that construction is sufficiently complete, in accordance with the Contract Documents, that the City may occupy a Project, or a designated portion thereof, for the use for which it was intended.
- 2.21. **"Task Order"** is an individual project, with a defined scope, fee, and time of performance, agreed to by the Director and Consultant.

### 3. CONSULTANT SERVICES AND RESPONSIBILITIES

#### 3.1. GENERAL

- 3.1.1. The Consultant agrees to provide prompt and efficient professional services for the Project(s) assigned by the Director through one or more Task Orders for the fees specified in this Agreement and Task Order(s) and in accordance with each Project Schedule. A Project Schedule shall be drafted by the Consultant, in consultation with the City staff, approved by the Director and updated monthly at the time of invoice submittal. The Consultant shall coordinate his performance of the services hereunder with the Director and such other persons as the Director may specify. The Consultant shall make periodic verbal or written reports and recommendations to the Director with respect to conditions, transactions, situations or circumstances encountered by the Consultant relating to the services to be performed under this Agreement and shall attend meetings which the Director determines to be necessary. The Consultant shall, upon written request, provide the Director with a copy of Documents prepared by the Consultant or made available to it as a result of its performance under this Agreement.
- 3.1.2. Task Order(s) must include the following:
  - 3.1.2.1. Agreement number and Consultant's name, address, and telephone number;
  - 3.1.2.2. Task Order number and date;
  - 3.1.2.3. Scope of services specifically identifying the Basic Services and Additional Services to be performed by Consultant;
  - 3.1.2.4. Project Description,
  - 3.1.2.5. Maximum Total Construction Cost for the Project,
  - 3.1.2.6. Time of performance consistent with Section 3.7,
  - 3.1.2.7. Identity of the Consultant's key personnel assigned to the Task Order who will perform services;

- 3.1.2.8. City project manager assigned to Task Order;
- 3.1.2.9. A breakout of fees by each phase of Basic Services and each Additional Service.
- 3.1.2.10. Method of payment, either a fixed lump sum agreement or an hourly-based agreement with not-to-exceed amounts for each service;
- 3.1.2.11. Balance of funds remaining in the Agreement;
- 3.1.2.12. Signatures of the Director and Consultant,
- 3.1.2.13. Any other information necessary to identify and perform the services or as otherwise may be required by the Director.

3.1.3. The Consultant shall proceed with performance of its services with full knowledge and understanding that the Maximum Total Construction Cost for a Project shall not exceed the sum(s) set out in Task Order(s) without the express written approval of the Director. The Consultant shall plan and design a Project in such a manner that the Consultant's best professional estimate of probable Construction Cost does not exceed the Maximum Total Construction Cost. If at any time during a Project, the Consultant's estimate of Construction Cost, for all work designed and specified, exceeds this amount, the Consultant shall immediately notify the Director. The Director may by written notice either increase the Maximum Total Construction Cost or obtain an agreed upon reduction in a Project scope. For any Maximum Total Construction Cost or budget revision, without an increase in the scope of a Project as defined in Task Order(s), there shall be no increase in the Consultant's fee. In the event the parties cannot agree on a revised Maximum Total Construction Cost this Agreement may be terminated according to Article 9 of this Agreement.

3.1.4. The Consultant shall designate a project manager who will be the Consultant's liaison for this Agreement.

3.1.5. The Consultant's Basic Services consist of those services performed by Consultant, Consultant's employees and Consultant's subcontractors as enumerated in the four phases described in Sections 3.2 through 3.5 and include normal civil, structural, architectural, mechanical and electrical engineering services, to meet the minimum requirements of the City Code of Ordinances. The Consultant agrees to perform the services set forth below for each Phase as authorized in Task Order(s).

3.1.6. If an actual or potential conflict arises between the interests of the City and the interests of the Consultant or other clients represented by Consultant, Consultant shall immediately notify the Director by telephone. If the Director in his sole discretion consents to Consultant's continued representation of such other clients, he shall notify the Consultant in writing. If the Director does not issue written consent within three business days of receipt of Consultant's notice, Consultant shall immediately terminate its representation of the other client whose interests are or may conflict with those of the City.

3.1.7. Consultant shall notify the Director promptly of any factor, occurrence or event coming to its attention that Consultant believes is likely to adversely affect its ability to meet any of its obligations hereunder or to materially delay delivery of any Document or service provided for herein and in a Project Schedule, in such event, the Consultant shall promptly consult with the Director regarding a plan of action to prevent, eliminate or remedy such

default or delay. Any request by Consultant to modify a Project Schedule shall be made in accordance with this Section.

- 3.1.8. **CONSULTANT SHALL MAKE TIMELY PAYMENTS TO ALL SUBCONTRACTORS, PERSONS AND ENTITIES SUPPLYING LABOR, MATERIALS OR EQUIPMENT FOR THE PERFORMANCE OF THIS AGREEMENT. CONSULTANT AGREES TO PROTECT, DEFEND, AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONSULTANT'S FAILURE TO MAKE SUCH PAYMENTS.**
- 3.1.9. Consultant shall be responsible for services performed by subcontractors to the same extent as if the services were performed by Consultant. Consultant shall replace any subcontractor when requested by the Director. Consultant shall provide the Director with a copy of any of its subcontractor's subcontracts at Director's request.
- 3.1.10. Consultant shall comply with all applicable state, federal and local laws and regulations and the City Charter and Code of Ordinances including but not limited to providing design documents consistent with all building code and other permitting requirements.
- 3.1.11. Consultant's performance shall conform to the professional standards prevailing in Harris County, Texas with respect to the scope, quality, due diligence, and care of the service and products Consultant provides under this Agreement.

## **3.2. PHASE I: DESIGN**

- 3.2.1. **General.** The Consultant shall furnish the Director with an electronic copy in a format specified by the Director of all drawings, specifications, reports and other required documents.
  - 3.2.1.1. The Consultant shall proceed with Phase I upon receipt of written authorization by the Director. The Consultant shall submit to the Director, within 10 days of the Notice to Proceed with Phase I, a revised Project Schedule, updated to reflect firm dates for activities and reviews set forth therein.
  - 3.2.1.2. The Consultant shall attend bi-weekly preliminary conferences with the Director and such others as the Director may designate to review the Program furnished by the City.
  - 3.2.1.3. The Consultant has reviewed the site and the scope of services as set forth in the Task order(s), determined its feasibility within established budgetary constraints, and arrived at an understanding of such requirements with the Director. The Consultant acknowledges that the Maximum Total Construction Cost is reasonable for a Project.
  - 3.2.1.4. Based on the Program and Project budget requirements, the Consultant shall prepare, for approval by the Director, the Phase I - Design.
  - 3.2.1.5. The Consultant shall commission and direct registered professional engineers to assume responsibility for the civil, structural, mechanical, and electrical engineering aspects of a Project throughout its design and construction.
  - 3.2.1.6. The Consultant shall, on behalf of the City, file all applications for utilities commitments and furnish any additional information necessary to obtain utility commitments.

3.2.2. **Phase I - Design.** The Consultant shall furnish to the Director an electronic copy in a format specified by the Director of drawings, outline specifications, reports, recommendations, analyses and a preliminary estimate of Construction Cost based on the Director's approval Phase I Design Documents. This submission shall include but not be restricted to the following where applicable:

- 3.2.2.1. General statement or schedule of proposed materials, systems and equipment proposed for incorporation into the project(s);
- 3.2.2.2. Outline specifications of principal materials, systems and equipment proposed for incorporation into the Project construction; and
- 3.2.2.3. Preliminary estimate of Construction Cost of the Project in sufficient detail to demonstrate its inclusiveness and to demonstrate the proposed level of quality throughout all aspects of the Project construction.
- 3.2.2.4. General listing of the types, quantities and sizes of spaces included in the design. Prepare a comparison of these spaces with those listed in the Program, if there is a variance.
- 3.2.2.5. Scaled drawings of the site plan, floor plan(s), exterior elevations and transverse and longitudinal sections through the building (if applicable).
- 3.2.2.6. Preliminary estimate of the probable Construction Cost of the Task Order, based on proposed systems and quantities.
- 3.2.2.7. General statement or schedule of proposed materials.
- 3.2.2.8. General statement of proposed structural system or systems in sufficient detail to demonstrate that spatial requirements have been accommodated and to provide a valid basis for the preliminary estimate of Construction Cost.
- 3.2.2.9. General statement of proposed mechanical, electrical and plumbing systems, in sufficient detail to demonstrate that spatial requirements have been accommodated and to provide a valid basis for the preliminary estimate of Construction Cost.

3.2.3. **Revisions.** The Consultant shall make modifications to the Phase I Design Documents as may be required to obtain approval of the Director and submit to the Director three additional sets of revised Phase I Design Documents and an electronic copy in a format specified by the Director.

### **3.3. PHASE II: DESIGN**

- 3.3.1. The Consultant shall proceed with the Phase II Contract Documents upon the Director's written approval of the Phase I Design and upon Director's written authorization to proceed.
- 3.3.2. Based upon approved Phase I Design Documents and any adjustments authorized by the Director in the Program or Project budget, the Consultant shall prepare, for approval by the Director, Contract Documents suitable for solicitation of competitive construction bids, for incorporation into a contract for construction of a Project and shall make clarifications and revisions necessary to obtain the building permit. It is the responsibility of the Consultant to ensure that the Contract Documents comply with all permitting requirements from all jurisdictions related to a Project. Contract Documents are those Documents

prepared for the purpose of obtaining bids and guiding the construction of a Project. Contract Documents shall generally include but not be restricted to the following.

- 3.3.2.1. Drawings of plans, elevations, sections and details defining the dimensions and spatial relationships of all elements of a Project.
- 3.3.2.2. A written Project manual, which includes bidding requirements, sample forms, conditions of the construction contract and specifications. The City will provide Consultant bidding requirements, sample forms and conditions of the construction contract for Consultant's inclusion in a Project manual. Specifications shall define the general requirements for a Project, written descriptions of the technical nature of materials, equipment, construction systems, standards and workmanship. The Consultant shall not include in either the general requirements or in other technical specification sections requirements that conflict with the bidding requirements, sample forms and conditions of the construction contract provided by the City. Dollar allowances shall not be used in a Project manual.
- 3.3.2.3. To the extent practicable for each item that requires a specific designation, the Consultant shall specify the products of at least three manufacturers of each material and manufactured item acceptable for use in a Project.
- 3.3.2.4. The specifications shall also provide means by which the successful bidder can submit for approval products other than those specified which it considers equivalent to those specified in quality, including durability, serviceability, design, appearance, function, finish, performance, size and weight. The Consultant shall advise the Director as to whether products other than those listed in the specifications are equivalent.

- 3.3.3. The Consultant shall attend review conferences with the Director and such others as the Director may designate to obtain the Director's approval of the development of the Contract Documents.
- 3.3.4. The Consultant shall advise the Director of any adjustments to previous estimates of Construction Cost indicated by changes in the requirements or general market conditions.
- 3.3.5. The Consultant shall, on behalf of the City, file all applications and Documents necessary to obtain approval of governmental authorities having jurisdiction over a Project and furnish any additional information necessary to obtain approvals. This shall include, but not be limited to, submittal of drawings to the Texas Department of Licensing and Regulations, Architectural Barriers Section for review, and Building Permit application. The Consultant shall provide the City with copies of Proof of Submission and Proof of Inspection filings.
- 3.3.6. The Consultant shall submit for the Director's approval a final estimate of the Construction Cost of a Project, based upon fully developed Contract Documents.
- 3.3.7. The Consultant shall furnish to the Director an electronic copy in a format specified by the Director of fifty percent complete documents and fully developed, permittable Contract Documents for review by the Director. The Consultant shall incorporate all review comments, if any, and furnish to the Director an electronic copy in a format specified by the Director of Contract Documents.

3.3.8. The Consultant and Consultant's subcontractors shall attend the Pre-Bid Conference and respond to bidders' questions. If required by the Director, the Consultant shall issue Addenda to the Contract Documents during the bid period as necessary to respond to bidders' questions and to make clarifications. The Consultant shall evaluate bids and bidders only when the Director requests such evaluations in writing.

#### **3.4. PHASE III: CONSTRUCTION SERVICES**

3.4.1. The Consultant shall proceed with Phase III Construction Services upon receipt of the notice to proceed to the Construction Contractor to commence construction.

3.4.2. Unless otherwise provided in this Agreement, the Consultant shall provide limited administration of the construction contract as set forth below.

3.4.3. The Consultant shall be a consultant of the City during Phase III Construction Services and shall advise and consult with the City. Instructions to the Construction Contractor by the City shall also be sent to the Consultant. The Consultant shall have authority to act on behalf of the City only to the extent provided in this Agreement.

3.4.4. The Consultant shall visit the site at intervals appropriate to the stage of construction, or as otherwise agreed in writing by the City and the Consultant, to become generally familiar with the progress and quality of the work and to determine, in general, if the work is proceeding in a manner indicating that the work when completed will be in accordance with the Contract Documents. The Consultant shall provide the Director written reports of its on-site observations regarding the progress and quality of the work. However, the Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work. Based on such on-site observations, the Consultant shall keep the Director informed of the progress and quality of the work, and shall notify the Director immediately in writing, of any defects and deficiencies in the Construction Contractor's work and work that is not performed in accordance with Contract Documents.

3.4.5. The Consultant shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, which are solely the Construction Contractor's responsibility under the construction contract. Except as otherwise provided herein, the Consultant shall not be responsible for the Construction Contractors schedules or failure to carry out the work in accordance with the Contract Documents. Except as otherwise provided herein, the Consultant shall not have control over or charge of acts or omissions of the Construction Contractor, the Construction Contractor's subcontractors, or the Construction Contractor's agents or employees, or of any other persons performing any portion of the work.

3.4.6. The Consultant shall always have access to the work wherever it is in preparation or progress.

3.4.7. The Consultant shall attend conferences at a Project site with the Director and such others as the Director may designate, to assist the City in the administration of the construction contract.

3.4.8. When requested by the Director, the Consultant shall assist the Director in determining the amounts owed to the Construction Contractor based on Consultant's on-site observations and on evaluations of the Construction Contractor's applications for payment

and shall recommend to the Director issuance of certificates for payment to the Construction Contractor.

3.4.9. The Consultant's approval of the Construction Contractor's application for payment shall constitute the Consultant's representation to the City that based upon the Consultant's on-site observations as provided in Section 3.4.4 and upon the data comprising the Construction Contractor's application for payment, that the work has progressed to the point indicated; and that, to the best of the Consultant's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent test required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to specific qualifications expressed by the Consultant. The Consultant's approval of the Construction Contractor's application for payment shall further constitute a representation that the Construction Contractor is entitled to payment in the certified amount. However, the Consultant's approval of the Construction Contractor's application for payment shall not be a representation that the Consultant has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the work, (2) reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by the City to substantiate the Consultant's right to payment or (3) ascertained how or for what purpose the Consultant has used money previously paid pursuant to the Agreement.

3.4.10. The Consultant shall interpret the requirements of the Contract Documents. The Consultant shall render interpretations necessary for the proper execution or progress of the work to the Director with reasonable promptness upon written request of either the Director or the Construction Contractor; and, if requested by the Director, shall render written advice to the Director within a reasonable time, on all claims, disputes and other matters in question between the City and the Construction Contractor relating to the execution or progress of the work or interpretation of the Contract Documents.

3.4.11. Interpretations and advice of the Consultant shall be consistent with the intent of the Contract Documents, be reasonably inferable from the Contract Documents, and shall be in written or graphic form. When making such interpretations and giving such advice, the Consultant shall not show partiality to either City or the Construction Contractor and shall not be liable for the result of any interpretation or advice so rendered in good faith.

3.4.12. The Consultant shall recommend to the Director to reject work which does not conform to the Contract Documents. Whenever the Consultant considers it necessary or advisable for the implementation of the intent of the Contract Documents, the Consultant shall recommend to the Director, to require special inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such work be then fabricated, installed or completed. However, neither this authority of the Consultant nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Consultant to the Construction Contractor, Construction Contractor's subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the work.

3.4.13. The Consultant shall review and recommend approval to the Director or take other appropriate action upon Construction Contractor's submittals such as shop drawings, product data and samples, but only for the limited purpose of checking for conformance information given and the design concept expressed in the Contract Documents. The Consultant's action shall be taken with such reasonable promptness as to cause no delay in the construction of a Project by the City or by separate Construction Contractors, while

allowing sufficient time in the Consultant's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Construction Contractor, all of which remain the responsibility of the Construction Contractor to the extent required by the Contract Documents. The Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Consultant, of construction means, methods, techniques, sequences or procedures. The Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Consultant shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

- 3.4.14. The Consultant shall submit to the Director a schedule of colors and finishes for a Project which the Consultant has selected from approved submittals. Wherever practicable, Consultant shall supplement schedule of colors and finishes with color chips, swatches and samples. Provided the Construction Contractor has submitted in a timely manner acceptable samples of products he proposes to use, the Consultant shall submit a schedule of colors and finishes with sufficient lead time to permit a thirty-day review/approval period without risk of delay and the timely incorporation of the finishes, materials and similar items with other aspects of a Project. During the review period, the Consultant shall confer with the Director and such others as the Director may designate and make adjustment to the schedule of colors and finishes as necessary to obtain approval by the Director.
- 3.4.15. The Consultant shall review Construction Contractor's requests and make recommendations to the Director. When requested by the Director, the Consultant shall prepare for the Director's approval and execution a change order or work change directive in accordance with the Contract Documents, and shall have authority, with the concurrence of the Director, to order minor changes in the work which do not involve an adjustment in the construction contract amount or an extension of the construction contract time for completion and which are not inconsistent with the intent of the Contract Documents. For the purpose of this section, "construction contract amount" shall be that amount and "construction contract time" for completion shall be that period as they appear in the Contract Documents initially or as they shall have been lawfully and legitimately amended under the terms of that contract at the time of such Construction Contractor's request. If the changes to the Contract Documents require jurisdictional approval, the Consultant is responsible for obtaining such approval.
- 3.4.16. The Consultant shall conduct inspections to determine and recommend to the Director the dates of Substantial Completion and the date of final completion, and shall receive and forward to the Director for the Director's review, written warranties, guarantees, releases, operating instructions and maintenance manuals, keys, equipment data and related documents required by the Contract Documents and assembled by the Construction Contractor, and shall approve the Construction Contractor's application for final payment upon compliance with the requirements of the Contract Documents.
- 3.4.17. The extent of the duties, responsibilities, and limitations of authority of the Consultant shall not be restricted, modified or extended without written notice by the City to the Consultant and Construction Contractor.

3.4.18. Before final payment of Phase III Construction Services compensation, the Consultant shall furnish to the Director, a complete set of AutoCAD V2013 (or another format as specified by the Director) and PDF files of drawings and specifications. The digital files shall reflect significant changes in the work including changes in scope made during construction, based on marked-up Project record drawings maintained by the Construction Contractor at a Project site, and drawings and other data furnished by the Construction Contractor to the Consultant. The Consultant shall be able to rely on the accuracy of such changes and other information supplied by the Construction Contractor and will not be required to perform studies to determine the completeness of such recorded changes, if any, supplied by the Construction Contractor.

### **3.5. PHASE IV: POST-CONSTRUCTION SERVICES**

3.5.1. The Consultant shall examine a Project in the company of the Construction Contractor, and the Director or such others as the Director may designate, no less than thirty days and no more than forty-five days prior to the expiration of the one-year correction period, established in the Contract Documents. On or before the seventh day after such field observations, the Consultant shall furnish the Director a written report identifying items which require repair or replacement under the one-year correction period provisions of the Contract Documents.

### **3.6. ADDITIONAL SERVICES**

3.6.1. The following Additional Services shall be performed by the Consultant, if authorized by the Director, in addition to Consultant's Basic Services and shall be paid for by the City as provided for in Section 8.7 of this Agreement. Additional Services shall only be provided when necessary and related to the purposes of this Agreement, when authorized in writing by the Director, and when sufficient funding has been allocated for such services.

3.6.1.1. Providing analyses of the City's needs and programming the requirements of a Project beyond the scope of services provided in Section 3.2.2.

3.6.1.2. Providing financial, feasibility or other special studies.

3.6.1.3. Providing planning surveys, site evaluations, environmental studies or comparative studies of prospective sites, and preparing special surveys, studies and submissions required for approvals of governmental authorities or others having jurisdiction over a Project.

3.6.1.4. Providing services related to future facilities, systems and equipment which are not intended to be constructed during the Phase III Construction Services.

3.6.1.5. Providing services to investigate existing conditions or facilities or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the City.

3.6.1.6. Preparing Documents for multiple bid packages or providing extra services in connection with bidding, negotiation or construction prior to the completion of the Phase II Contract Documents.

3.6.1.7. Providing detailed estimates of Construction Cost beyond the scope of estimate of Construction Cost based on current area, volume, or similar unit costs as required in Sections 3.2.3.5, 3.3.4 and 3.3.6; and providing analyses

of owning and operating costs, or detailed quantity surveys or inventories of material, equipment and labor.

- 3.6.1.8. Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.
- 3.6.1.9. Providing services for planning leased tenant or rental spaces.
- 3.6.1.10. Making revisions in drawings, specifications or other Documents when such revisions are inconsistent with written approvals or instructions previously given, or during Phase II, making revisions to the Contract Documents required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such Documents or due to other causes not within the control of the Consultant.
- 3.6.1.11. Preparing drawings, specifications and supporting data and providing other services in connection with a change to approved Phase II Contract Documents to the extent that such services are in excess of the Basic or other Additional Services required of the Consultant pursuant to this Agreement and provided such changes are not necessitated by an act or omission of the Consultant. In the event a change order is caused by an act or omission of the Consultant, the Consultant will be required to prepare such drawings and specifications and supporting data and obtain jurisdictional approvals at no expense to the City.
- 3.6.1.12. Making investigations, surveys, valuations, inventories or detailed appraisals of existing facilities and services required in connection with construction performed by the City.
- 3.6.1.13. Providing consultation concerning replacement of any work damaged during construction by fire or any other cause not under the Consultant's control and furnishing services as may be required in connection with the replacement of such work.
- 3.6.1.14. Providing services made necessary by the default of the Construction Contractor, or by major defects or deficiencies in the work of the Construction Contractor, or by failure of performance of either the City or Construction Contractor under the contract for construction.
- 3.6.1.15. Providing extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
- 3.6.1.16. Providing services of subcontractors for other than the normal Landscape Architectural Consultant Services, civil engineering, structural engineering, mechanical engineering and electrical engineering services for the Task Order.
- 3.6.1.17. Providing additional construction phase services in the event that 1) the number of calendar days stipulated in the Contract Documents for Substantial Completion is exceeded beyond the time period set out in Section 8.2.2 due to no fault of the Consultant or 2) the number of calendar days allowed for Substantial Completion under the Contract Documents is increased by change

order beyond the time period set out in Section 8.2.2 due to no fault of the Consultant.

- 3.6.1.18. Providing inspection of a Project in the company of the Construction Contractor, and the Director, or such others as the Director may designate, no less than thirty days and no more than forty-five days prior to expiration of any special Project warranty, but after expiration of the one-year correction period, as defined in the general conditions of the construction contract, established in the Contract Documents. On or before the seventh day after such inspection, the Consultant shall provide the Director a written report enumerating items which require repair or replacement under the special Project warranty provisions of the Contract Documents.
- 3.6.1.19. Providing land survey services to supplement any legal description and site information provided by the City and to include, but not be limited to, as applicable to a Project, grades of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, deed restrictions and contours of the site, locations, dimensions and complete data pertaining to existing buildings, other improvements and trees; and information concerning available services and utility lines both public and private, above and below grade, including invert and depths in accordance with Project requirements. The Consultant shall commission a survey to be prepared by a registered land surveyor acceptable to the Director. The survey shall be signed and sealed by the registered land surveyor.
- 3.6.1.20. Providing geotechnical investigation and engineering services required for the design of a Project. Such services may include, as applicable to a Project, test borings, test pits, soil bearing values, percolation tests, and similar investigations and engineering services with reports and appropriate recommendations in accordance with Project requirements. The Consultant shall commission a geotechnical investigation to be completed by a registered geotechnical subcontractor acceptable to the Director. The geotechnical report and appropriate recommendations shall be signed and sealed by the registered geotechnical engineer.
- 3.6.1.21. Providing Cultural Resource Reconnaissance or Surveying services as defined in the General Rules of Practice and Procedures, Chapter 41 of the Texas Antiquities Committee, to supplement the site information provided by the City and to identify potential historic or prehistoric sites in Project areas to be affected by improvements planned as part of a Project. The reconnaissance shall be conducted in accordance with procedures promulgated by the Texas Antiquities Committee in conformance with the Antiquities Code of Texas and signed by a professional archaeologist acceptable to the Texas Antiquities Committee and the Director. For the purposes of this Agreement, the Director is authorized to approve the archaeologist's permit applications for such Cultural Resource Reconnaissance or Surveys on behalf of the City.
- 3.6.1.22. Providing data processing and photographic production techniques when used in connection with another Additional Service.
- 3.6.1.23. Providing other professional services beyond the scope of Basic Services of this Agreement which are necessary and related to the purposes of this Agreement.

3.6.2. Whenever the Consultant, in the course of performing Basic Services, is required to present recommendations to the Director with respect to the advisability of, or the need for, any Additional Service, such recommendation shall include a recommended scope for the Additional Services and the recommended fee and expenses. If the Consultant recommends subcontract services, the recommendation shall also include the names of the subcontractor(s) recommended by the Consultant. A maximum fee for each such subcontractor's service shall be proposed by the Consultant at the time Additional Services requiring such expenses are requested by the Director and shall be negotiated and agreed upon by the Consultant and the Director prior to the expense being incurred. The compensation for each such subcontractor's service expense shall never exceed this agreed upon maximum amount.

**3.7. TIME**

3.7.1. The Consultant shall perform Basic and Additional Services as expeditiously as is consistent with professional skill and care, and the orderly progress of the work. Upon issuance of a Task Order, the Consultant shall submit for Director's approval a calendar schedule of Consultant's services not exceeding the time limits provided in the Task order, and which shall include allowances for periods of time required for City's review and for approval of submissions by authorities having jurisdiction over a Project. Time limits established by a Task order shall not, except for reasonable cause, be exceeded by Consultant or by the City.

3.7.2. Extensions of any of the time-of-performance commitments by the Consultant in a Task Order shall be granted only by the Director, in written form, and shall have the same force and effect as the time-of-performance commitments originally stated in the Task Order.

3.7.3. The Consultant acknowledges and agrees that any services it provides to the City after the completion date established in a Project Schedule, unless an extension of time has been granted, will be deemed to be gratuitously provided, and the City shall have no obligation to pay for such services unless the City Council approves an agreement to do so in its sole discretion.

**3.8. INSURANCE.**

3.8.1. Consultant shall provide and maintain certain insurance and Endorsements in full force and effect at all times during the term of this Agreement and any extensions thereto. Such insurance is described as follows.

3.8.1.1. **Risks and Limits of Liability.** Consultant shall maintain the following insurance coverages in the following amounts:

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<u>COVERAGE</u>	<u>LIMIT OF LIABILITY</u>
Workers' Compensation	<ul style="list-style-type: none"> <li>• Texas Statutory for Workers' Compensation</li> </ul>
Employer's Liability	<ul style="list-style-type: none"> <li>• Bodily Injury by accident \$1,000,000 (each accident)</li> <li>• Bodily Injury by Disease \$1,000,000 (policy limit)</li> <li>• Bodily Injury by Disease \$1,000,000 (each employee)</li> </ul>
Commercial General Liability: Including Broad Form Coverage, Bodily Injury and Property Damage (Products and Completed Operations required when Physical Operations performed)	<ul style="list-style-type: none"> <li>• \$1,000,000 Limit each Occurrence and \$2,000,000 aggregate per 12-month period</li> </ul>
Automobile Liability	<ul style="list-style-type: none"> <li>• \$1,000,000 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos</li> </ul>
Professional Liability	<ul style="list-style-type: none"> <li>• \$2,000,000 Limit per claim/aggregate</li> </ul>
Excess Liability applicable to Commercial General and Automobile Liability	<ul style="list-style-type: none"> <li>• \$1,000,000 Limit each occurrence/aggregate</li> </ul>
<b>Aggregate Limits are per 12-month policy period unless otherwise indicated.</b>	

3.8.2. **Insurance Coverage.** At all times during the term of this Agreement and any extensions or renewals, Consultant shall provide and maintain insurance coverage that meets the Agreement requirements. Prior to beginning performance under the Agreement, at any time upon the Director's request, or each time coverage is renewed or updated, Consultant shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Consultant shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Consultant waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Consultant shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

3.8.3. **Form of insurance.** The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Agreement. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide.

3.8.4. **Required Coverage.** The City shall be an Additional Insured under this Agreement, and all policies except Professional Liability and Worker's Compensation must name the City as an Additional Insured. Consultant waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Consultant's insurance

policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement. If professional liability coverage is written on a "claims made" basis, Consultant shall also provide proof of renewal each year for two years after substantial completion of a Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for a Project covered by this Agreement with a duration of two years after substantial completion.

3.8.5. **Notice. CONSULTANT SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED.** Within the 30-day period, Consultant shall provide other suitable policies in order to maintain the required coverage. If Consultant does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Consultant from any further performance under this Agreement and begin procedures to terminate for default.

### **3.9. INDEMNIFICATION**

3.9.1. **CONSULTANT AGREES TO AND SHALL, TO THE EXTENT PERMITTED BY TEXAS LOCAL GOVERNMENT CODE §271.904, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY ARISING AS A RESULT OF CONSULTANT'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONSULTANTS', OR SUBCONTRACTORS' ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS IN CONNECTION WITH ITS PERFORMANCE UNDER THIS AGREEMENT, WHETHER CONSULTANT IS IMMUNE FROM LIABILITY OR NOT. CONSULTANT SHALL INDEMNIFY AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. THE INDEMNITY SHALL APPLY WHETHER OR NOT THE EVENT IS CAUSED BY THE CONTRIBUTORY NEGLIGENCE OF THE CITY.**

### **3.10. OWNERSHIP OF DOCUMENTS**

3.10.1. Consultant shall grant and assign and hereby does grant and assign to the City all rights, title, interest and full ownership worldwide in and to any work, invention and all Documents, including Contract Documents, or any modifications or improvements to them, and the copyrights, patents, trademarks, trade secrets, source and object codes and any other possessory or proprietary rights therein, that are discovered, conceived, developed, written or produced by the Consultant, its agents, employees, contractors and subcontractors pursuant to this Agreement (collectively, the "Works"), to have and to hold the same unto the City absolutely. This right of ownership shall include the City's ability to modify, sell, or license all computer programs, including all access to programming codes necessary to do so.

3.10.2. Consultant agrees that neither it nor any of its agents, employees, contractors or subcontractors shall have any right to assert or establish a claim or exercise any of the rights embodied in any copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights related to the Works. If requested by the Director, the

Consultant shall place a conspicuous notation upon any such Works which indicates that the copyright, patent, trademark or trade secret thereto is owned by the City of Houston.

- 3.10.3. Consultant shall execute all documents required by the Director to further evidence such assignment and ownership. Consultant shall cooperate with the City in registering, creating or enforcing any copyrights, patents, trademarks, trade secrets or other possessory or proprietary rights arising hereunder. If any assistance by the Consultant is requested and rendered pursuant to this Section, the City shall reimburse Consultant for all out-of-pocket expenses incurred by Consultant in rendering such assistance. On termination of this Agreement or upon request by the Director, Consultant shall deliver all Works to the City. Consultant shall obtain written agreements in the form specified in Exhibit E from its agents, contractors and subcontractors performing work hereunder which bind them to the terms contained in this Section.
- 3.10.4. The Consultant may, however, retain copies of such Documents. The Consultant shall have the right to use such copies internally, but the Consultant may not sell, license or otherwise market such Documents. Upon request by the Director, the Consultant shall deliver such Documents to the City.
- 3.10.5. Consultant does not represent that the Documents are or are intended to be, suitable for use on other Projects or extensions of a Project, to the extent that the Documents are site-specific. Any modification to the Consultant's work product or unintended use of same will be at the sole risk of the City.

### **3.11. PARTICIPATION IN BIDDING AND CONSTRUCTION**

- 3.11.1. Consultant agrees not to participate in the bidding process as a bidder and not to engage in construction of a Project as a contractor or subcontractor. By written agreement, Consultant shall require each subcontractor or consultant for Project engineering services to be bound by the requirements of this Section.

### **3.12. EQUAL EMPLOYMENT OPPORTUNITY**

- 3.12.1. Consultant shall comply with the City's Equal Employment Opportunity Ordinance as set out in Section 15-17 of the Code of Ordinances.

### **3.13. MINORITY AND WOMEN BUSINESS ENTERPRISES PARTICIPATION**

- 3.13.1. Consultant shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances, and the applicable Office of Business Opportunity's ("OBO") Policies and Procedures. Consultant shall make good faith efforts to award subcontracts or supply agreements in at least 5% of the value of this Agreement to MWBEs ("Stated MWBE Goal(s)"). If the Consultant is a certified MBE or WBE, Consultant may count toward goals the work that it commits to perform with its own work force, capped at 50% of the total advertised goal. Consultant acknowledges that it has reviewed the requirements for good faith efforts on file with OBO and will comply with them.
- 3.13.2. For purposes of this section, "Contract Year" means a 12-month period during the term of the agreement commencing on the Countersignature Date of this Agreement and each anniversary thereof. If the term of this Agreement exceeds one Contract Year and Consultant's MWBE participation level in a Contract Year is less than the Stated MWBE goal(s), then within 30 calendar days of the end of each Contract Year Consultant must provide a written explanation to both the Director and Office of Business Opportunity

Director (“OBO Director”) of the following: (1) the discrepancy between Consultant’s MWBE participation level and the Stated MWBE Goal(s); (2) the reason for the discrepancy, and (3) Consultant’s good faith efforts (in accordance with the City’s policy) toward achieving the Stated MWBE goal(s). As part of the good faith efforts assessment, the OBO Director may consider Consultant’s failure to timely submit the notice or explanation required by this provision, and the OBO Director may impose sanctions or other penalties on Consultant for said failures in accordance with this section of this Agreement, Chapter 15 of the Code of Ordinances, OBO’s policies and procedures, and the City’s good faith efforts policy.

- 3.13.3. The OBO Director, in consultation with the Director, may review, at any time during the Term of this Agreement, Consultant’s progress toward attainment of the Stated MWBE Goal(s), by reviewing the percentage of work to MWBE subcontractors and the payments Consultant has made to such MWBE subcontractors. If the OBO Director determines that Consultant is not in compliance with this section of this Agreement, Chapter 15 of the Code of Ordinances, OBO’s policies and procedures, and the City’s good faith efforts policy, the OBO Director may:
  - 3.13.3.1. After consultation with the Director and the Chief Procurement Officer, determine whether any of the following actions should be taken and notify Consultant of such determination:
    - 3.13.3.1.1. Enter a written agreement with Consultant allowing Consultant to cure the noncompliance matter;
    - 3.13.3.1.2. Suspend Consultant from engaging in any agreement with the City for a period up to, but not to exceed, five years, pursuant to Section 15-88 of the City’s Code of Ordinances, as may be amended from time to time; or
    - 3.13.3.1.3. Take any other appropriate remedy.
  - The determination of the OBO Director is final.
- 3.13.3.2. Make a recommendation to the Director and the Chief Procurement Officer, to:
  - 3.13.3.2.1. Withhold payment or reimbursement under this Agreement;
  - 3.13.3.2.2. Make a finding that Consultant is in default or has breached this Agreement;
  - 3.13.3.2.3. Determine not to renew this Agreement;
  - 3.13.3.2.4. Terminate for cause this Agreement; or
  - 3.13.3.2.5. Take any other appropriate remedy.
- 3.13.4. Consultant shall maintain records showing:
  - 3.13.4.1. Subcontracts and supply agreements with Minority Business Enterprises;
  - 3.13.4.2. Subcontracts and supply agreements with Women Business Enterprises;
  - 3.13.4.3. Subcontracts and supply agreements with Small Business Enterprises (if any);

- 3.13.4.4. Written confirmation from MWBE subcontractors and suppliers that they are participants on the agreement; and
- 3.13.4.5. Specific efforts to identify and award subcontracts and supply agreements to MWBEs. Consultant shall submit periodic reports of its efforts under this Section to the OBO Director in the form and at the times he or she prescribes.

3.13.5. Consultant shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:

- 3.13.5.1. [Name of MWBE subcontractor] shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.
- 3.13.5.2. Within five (5) business days of execution of this subcontract, Consultant [prime contractor] and Subcontractor shall designate, in writing, to the City of Houston's OBO Director ("the OBO Director") an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street, mailing address, phone number, and email address of such agent.
- 3.13.5.3. After reasonable attempt(s) to resolve disputes between the parties involving the terms, covenants, or conditions of this subcontract, a request for dispute resolution may be submitted to the Director. The Director may prescribe procedures to provide dispute resolution services in accordance with the requirements of Chapter 15 of the Houston City Code of ordinances.

#### **3.14. DRUG ABUSE DETECTION AND DETERRENCE**

- 3.14.1. It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Consultant shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.
- 3.14.2. Before the City signs this Agreement, Consultant shall file with the Agreement Compliance Officer for Drug Testing ("CCODT"):
  - 3.14.2.1. A copy of its drug-free workplace policy;
  - 3.14.2.2. The Drug Policy Compliance Agreement substantially in the form set forth in Exhibit B; and
  - 3.14.2.3. A written designation of all safety impact positions or, if applicable, a Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit C.

- 3.14.3. If Consultant files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six months during the performance of this Agreement or on completion of this Agreement if performance is less than six months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit D. Consultant shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each six-month period of performance and within 30 days of completion of this Agreement. The first six-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Consultant begins work under this Agreement.
- 3.14.4. Consultant also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Consultant 's employee work force.
- 3.14.5. Consultant shall require that its subcontractors comply with the Executive Order, and Consultant shall secure and maintain the required documents for City inspection.

### **3.15. CONFIDENTIALITY**

- 3.15.1. Consultant and each of its Consultants shall keep all Documents and City work products or data it receives in strict confidence. Consultant shall not divulge such records or the information contained therein except as approved in writing by the Director or as otherwise required by law.

### **3.16. LICENSES AND PERMITS**

- 3.16.1. Consultant shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation. Consultant shall immediately notify the Director of any suspension, revocation, or other detrimental action against his or her license.

### **3.17. PAY OR PLAY**

- 3.17.1. The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, as revised from time to time, are incorporated into this Agreement for all purposes. Consultant has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions.

### **3.18. COMPLIANCE WITH CERTAIN STATE LAW REQUIREMENTS.**

- 3.18.1. Anti-Boycott of Israel. Consultant certifies that Consultant is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.
- 3.18.2. Anti-Boycott of Energy Companies. Consultant certifies that Consultant is not currently engaged in and agrees for the duration of this Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.
- 3.18.3. Anti-Boycott of Firearm Entities or Firearm Trade Associations. Consultant certifies that Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.

3.18.4. Certification of No Business with Foreign Terrorist Organizations. For purposes of Section 2252.152 of the Texas Government Code, Consultant certifies that, at the time of this Agreement neither Consultant nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Consultant, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Texas Government Code as a company known to have contracts with or provide supplies to a foreign terrorist organization.

**3.19. ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES**

3.19.1. The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Consultant has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Agreement's effective date. Consultant shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Consultant or its subcontractors providing services or goods under this Agreement within 7 days of Consultant becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

**3.20. PRESERVATION OF CONTRACTING INFORMATION.**

3.20.1. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Consultant agrees that this Agreement can be terminated if the Consultant knowingly or intentionally fails to comply with a requirement of that subchapter. If the requirements of Subchapter J, Chapter 552, Texas Government Code, apply to this Agreement, then for the duration of this Agreement (including the initial term, any renewal terms, and any extensions), Consultant shall preserve all contracting Information, as defined by Section 552.003 of the Texas Government Code, related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy, which record retention requirements include but are not limited to those set forth in Chapters 201 and 205 of the Texas Local Government Code and Texas Administrative Code Title 13, Chapter 7. Within five business days after receiving a request from the Director, Consultant shall provide any contracting Information related to this Agreement that is in the custody or possession of Consultant. Upon the expiration or termination of this Agreement, Consultant shall, at the Director's election, either (a) provide, at no cost to the City, all contracting Information related to this Agreement that is in the custody or possession of Consultant, or (b) preserve the contracting Information related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy.

3.20.2. If Consultant fails to comply with any one or more of the requirements of this Section, Preservation of contracting Information, or Subchapter J, Chapter 552, Texas Government Code, then, in accordance with and pursuant to the processes and procedures set forth in Sections 552.373 and 552.374 of the Texas Government Code, the Director shall provide notice to the Consultant and may terminate this Agreement. To effect final termination, the Director must notify Consultant in writing with a copy of the notice to the CPO. After receiving the notice, Consultant shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

#### **4. THE CITY'S RESPONSIBILITIES**

- 4.1 The City shall provide information regarding requirements for a Project including a written descriptive document, which shall set forth in detail the City's conditions and requirements for objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expendability, special equipment, and other conditions or requirements appropriate to the nature of a Project.
- 4.2 The City shall establish and update, when necessitated by changes in the agreed estimate and overall budget for a Project which shall include contingencies for bidding, changes in the work during construction, and other costs which are the responsibility of the City, including those described in this Article 4 and in Section 5.1.2.
- 4.3 The Director shall designate a representative authorized to act on the City's behalf with respect to a Project. The Director's authorized representative shall examine the Phase I and Phase II documents submitted by the Consultant and shall render and obtain decisions pertaining thereto promptly to avoid unreasonable delay in the Consultant's services.
- 4.4 If required for a Project, the City shall furnish or shall authorize the cost of obtaining as an Additional Service, a complete and correct written legal description of the site, including metes and bounds, corners, lines of streets and alleys, and location of the site.
- 4.5 The City shall pay for quality control testing and other laboratory tests, inspections and reports as required by law or by the Contract Documents.
- 4.6 When required for a Project, and when the services, information, surveys and reports described in Sections 4.4 and 4.5 inclusive, are furnished by the City, the Consultant shall be able to rely upon the accuracy and completeness thereof.
- 4.7 If the City observes or otherwise becomes aware of any fault or defect in a Project or nonconformance with the Contract Documents, prompt written notice thereof shall be given by the City to both the Consultant and Construction Contractor.
- 4.8 The City shall furnish required information and services and shall render or obtain approvals and decisions as expeditiously as necessary for the orderly progress of the Consultant's services and of the work.

#### **5. CONSTRUCTION COST**

##### **5.1. DEFINITION**

- 5.1.1. The Construction Cost shall be the actual cost to the City of all elements of a Project designed or specified by the Consultant.
- 5.1.2. Estimates of Construction Cost shall include (1) the cost, at current market rates, of labor and materials furnished by the City, (2) equipment designed, specified, selected or specially provided for by the Consultant, (3) City building permit fees, and (4) a reasonable allowance for the cost of construction, including the Construction Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding.
- 5.1.3. Construction Cost does not include the compensation of the Consultant and the Consultant's subcontractors, the cost of the land, rights-of-way, or other costs which are the responsibility of the City as provided in Article 4.

## **5.2. RESPONSIBILITY FOR CONSTRUCTION COST**

- 5.2.1. Evaluations of the City's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Costs, if any, prepared by the Consultant, represent the Consultant's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Consultant nor the City has control over the cost of labor, materials or equipment, over the Construction Contractor's methods of determining bid prices, or over competitive bidding or market conditions. Accordingly, the Consultant cannot and does not warrant or represent that bids will not vary from a Project budget proposed, established or approved by the City, if any, or from any estimates of Construction Cost or evaluation prepared by the Consultant.
- 5.2.2. When a Maximum Total Construction Cost is established as a condition of this Agreement in Task Order(s) or at any time prior to the taking of bids, the Consultant shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, and, with written approval, to make reasonable adjustments in the scope of a Project, or to include in the Contract Documents alternate bids to adjust the Construction Cost to the specified Maximum Total Construction Cost.
- 5.2.3. If bidding has not commenced within 6 months after the Consultant submits the Contract Documents to the City, any Project budget or Maximum Total Construction Cost may, when warranted in the opinion of the Director, be adjusted to reflect any change in the general levels of prices in the construction industry between the date of submittal of the Contract Documents to the City and the date on which bid proposals are sought.
- 5.2.4. If a Project budget or Maximum Total Construction Cost (adjusted as provided in Section 5.2.3) is exceeded by the lowest bona fide bid, the City shall (1) give written approval of an increase in such Maximum Total Construction Cost, or (2) authorize rebidding of a Project within a reasonable time, or (3) in the event a Project is abandoned, suspended in accordance with Section 9.4, cooperate in revising a Project scope and quality as required to reduce the Construction Cost. In the case of (4), provided a Maximum Total Construction Cost has been established as a condition of this Agreement, the Consultant, without additional charge, shall modify the Contract Documents as necessary to comply with the Maximum Total Construction Cost. The successful provision of such service shall be the limit of the Consultant's responsibility arising from the establishment of such Maximum Total Construction Cost, and having done so, the Consultant shall be entitled to compensation for all services performed, in accordance with this Agreement, whether or not Phase III: Construction Services are commenced.

## **6. DIRECT PERSONNEL EXPENSE**

### **6.1. DEFINITION**

- 6.1.1. Direct Personnel Expense is defined as the direct salaries of the Consultant and all of the Consultant's personnel directly engaged on a Project, plus the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits. For the purpose of this Agreement the cost of such contributions and benefits is established as equal to the percentages of direct salaries. The percentage cost of such contributions and the direct salary rates for the duration of this Agreement are shown on Exhibit A.

## 7. REIMBURSABLE EXPENSES

### 7.1. DEFINITION

7.1.1. REIMBURSABLE EXPENSES. A maximum amount for each Reimbursable Expense shall be proposed by the Consultant at the time that services requiring such expenses are requested by the Director and shall be negotiated and agreed upon by the Consultant and the Director prior to the expenses being incurred. The compensation for each such Reimbursable Expense shall never exceed this agreed upon maximum amount. Reimbursable Expenses are to be paid in addition to the compensation for Basic and Additional Services and include actual expenditures made by the Consultant and the Consultant's employees and subcontractors, including any sales tax Consultant is legally required to pay, in the interest of a Project while performing services requested by the Director pursuant to the following Sections:

- 7.1.1.1. *Travel Costs.* If authorized in advance in writing by the Director, travel costs in connection with out-of-town travel, to points outside of the greater City of Houston area, not to exceed the amounts established under the City's then current travel reimbursement policy for its employees,
- 7.1.1.2. *Reproduction.* Expense of reproductions, of drawings, specifications and other Documents. Expenses for reproductions for submittals or correction of submittals required under Phase I or Phase II, reproductions for the office use of the Consultant and the Consultant's subcontractors are not reimbursable,
- 7.1.1.3. *Overtime.* If authorized in advance by the Director, the expense of overtime work requiring higher than regular rates,
- 7.1.1.4. *Renderings, Models, Mock-Ups.* If authorized in advance by the Director, the expense of renderings, models and mock-ups,
- 7.1.1.5. *Filings.* If authorized in advance by the Director, the expense of filing documents for governmental approval under Sections 3.2.1.5 and 3.3.5, except for building permits, required for a Project.

## 8. PAYMENTS TO THE CONSULTANT

### 8.1. GENERAL

- 8.1.1. The City shall compensate the Consultant under this Agreement as provided in this Article.
- 8.1.2. The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Consultant's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificates and federal tax identification number to Consultant if requested.

### 8.2. PAYMENTS FOR BASIC SERVICES

- 8.2.1. Payments for Basic Services shall be made as set forth in Section 8.6.
- 8.2.2. If the time initially established in the construction contract for completion of a Project is extended, through no fault of the Consultant, for more than 90 calendar days, the Consultant may request compensation for any required extension of Phase III services,

which, if authorized, shall be paid in accordance with the provisions of Section 8.7 for Additional Services.

8.2.3. Payments for Basic Services may be made monthly upon presentation of the Consultant 's statement of services rendered and expenses incurred.

### **8.3. PAYMENTS FOR ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES**

8.3.1. Payments for Additional Services and for Reimbursable Expenses may be made monthly upon presentation of the Consultant's statement of services rendered or expenses incurred.

### **8.4. PAYMENTS WITHHELD**

8.4.1. No deductions shall be made from the Consultant's compensation on account of penalty, liquidated damages or other sums withheld from payments to the Consultant.

8.4.2. If the Consultant receives payment from the City for work performed by any subcontractor or for materials provided by any supplier and the Consultant withholds or has withheld payment to the subcontractor or supplier on account of a deficiency in the quality or quantity of that subcontractor's or supplier's work or materials, the City may withhold the amount associated with such work or materials from any pending or future payments to the Consultant until the next regular payment to the Consultant occurring after the City receives reasonable documentation that the deficiency has been remedied.

### **8.5. PROJECT SUSPENSION**

8.5.1. If a Project is suspended for more than 365 days, the Consultant shall be compensated in accordance with this Article, for all services performed prior to the suspension.

### **8.6. COMPENSATION FOR BASIC SERVICES**

8.6.1. For Basic Services of the Consultant, as described in Sections 3.1, 3.2, 3.3, 3.4, and 3.5, but excluding Reimbursable Expenses, compensation to the Consultant shall be a lump sum amount agreed upon by the Consultant and the Director that will be recorded in each Task Order. The Director may negotiate a lump sum fee for each Task Order equal to or less than the following:

8.6.1.1. Direct Personnel Expenses, defined in Section 6.1, times the multiplier indicated in Exhibit "A" for each personnel classification (where the total salary cost is calculated by multiplying actual Direct Salaries times 1.25 times corresponding multiplier for each classification (Exhibit "A") times the necessary hours to complete the Task Order); plus

8.6.1.2. Estimated Subcontract Cost times 1.1.

### **8.7. COMPENSATION FOR ADDITIONAL SERVICES**

8.7.1. For Additional Services of the Consultant, as described in Section 3.6.1, but excluding Reimbursable Expenses and Additional Services of subcontractors, compensation to the Consultant shall be a multiple of \_\_\_\_\_ times the Direct Personnel Expense of the Consultant 's Principals and employees incurred in the interest of a Project.

8.7.2. For Additional Services as described in Section 3.6.1 provided by subcontractors under contract with the Consultant, compensation to the Consultant shall be a multiple of 1.1 times the Subcontract Cost incurred in the interest of a Project. For Additional Services described in Section 3.6.1, payment to Consultant shall be subject to the not-to-exceed amounts set out in the Task order(s).:

## **8.8. REIMBURSABLE EXPENSES**

8.8.1. For Reimbursable Expenses, as described in Article 7, compensation to the Consultant shall be a multiple of 1.10 times the amounts expended by the Consultant, the Consultant 's employees and/or subcontractors in the interest of a Project.

## **8.9. LIMIT OF APPROPRIATION**

- 8.9.1. The City's duty to pay money to Consultant under the Agreement is limited in its entirety by the provisions of this Section.
- 8.9.2. In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated \$                    ("Original Allocation") to pay money due under the Agreement. The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for the Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:
- 8.9.3. The City makes a Supplemental Allocation by issuing to Consultant a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

## **NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"**

By signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This Supplemental Allocation has been charged to such appropriation.

\$ \_\_\_\_\_

8.9.4. The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under the Agreement in excess of the Allocated Funds. Consultant must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Consultant's only remedy is suspension or termination of its performance under the Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

8.9.5. The Director shall have the authority to reallocate funding between and among the various categories of Additional Services and the various categories of Reimbursable Expenses.

## **8.10. ADDITIONAL PROVISIONS**

8.10.1. All invoices for the Basic Services are subject to approval by the Director and are due and payable on or about thirty days after receipt and approval by the Director. The City agrees that it will not unreasonably delay or withhold payment or approval of any invoice; however, the Director shall approve in whole or in part or disapprove Consultat's invoices within fifteen days. Neither partial payments made hereunder nor approval of invoices or services by the Director shall be construed as final acceptance or approval of that part of the Consultant's services to which such partial payment or approval relates nor shall such payments be construed as relieving the Consultant of any of its obligations hereunder with respect thereto.

## **9. AGREEMENT TERM AND TERMINATION**

### **9.1. AGREEMENT TERM**

9.1.1. This Agreement is effective on the Countersignature Date and remains in effect for three years ("Primary Term") unless terminated sooner.

9.1.2. *Renewal Terms.* Upon expiration of the Primary Term, this Agreement will be automatically renewed for up to two additional successive one-year terms on the same terms and conditions as the Primary Term, unless the Director, at his or her sole discretion, notifies Consultant in writing of non-renewal at least thirty days before the expiration of the Primary Term or current Renewal Term.

9.1.3. The Director may issue a Task Order at any time during the Initial Term of this Agreement and subsequent renewals or extensions to it. After expiration or termination of this Agreement, no additional Task Orders may be issued, however, for any Task Order issued prior to the expiration or termination of this Agreement, Consultant shall complete the work or services under the Task Order and this Agreement shall likewise remain in effect only for those purposes necessary and appropriate for the Task Order to continue until its own expiration or termination, unless Consultant is otherwise notified in writing by the Director.

### **9.2. TERMINATION BY THE CITY FOR CONVENIENCE**

9.2.1. The Director may terminate Consultant's performance under this Agreement at any time by giving seven days written notice to Consultant. As soon as possible, but not later than the effective date of such notice, Consultant shall, unless the notice directs otherwise, immediately discontinue all services in connection with this Agreement and shall proceed to promptly cancel all existing orders and Consultant subcontracts insofar as such orders or subcontracts are chargeable to this Agreement. Within seven days after the effective date of notice of termination, Consultant shall deliver copies of all Documents to the Director and submit an invoice showing in detail services performed under this Agreement to the date of termination. The City shall then pay the prescribed fees to Consultant for services actually performed under this Agreement up to the date of termination less such payment on account of charges previously made, in the same manner as prescribed in Article 8 of this Agreement. Any installments or lump sum fees shall be prorated in accordance with the progress of the Work at the effective date of termination. Consultant may, if necessary, submit invoices for vendor and Consultant charges reasonably necessary for a Project which are incurred prior to the effective date of termination and received by Consultant after its initial termination invoice.

9.2.2. Consultant understands and acknowledges that if the City determines not to proceed with this Agreement, according to the terms of this article, the Director shall provide Consultant

with a written notice of his intent to terminate this Agreement, and this Agreement shall terminate upon Consultant's receipt of such written notice.

### **9.3. TERMINATION BY THE CITY FOR CAUSE**

9.3.1. City may terminate this Agreement in the event of a material default by Consultant and a failure by Consultant to cure such default after receiving notice thereof, as provided in this Section. Default by Consultant shall occur if Consultant fails to observe or perform any of its duties under this Agreement, if Consultant dies (if an individual), or for some other reason is unable to render services hereunder. Should such a default occur, the Director will deliver a written notice to Consultant describing such default and the proposed date of termination. Such date may not be sooner than the seventh day following receipt of the notice. The Director, at his or her sole option, may extend the proposed date of termination to a later date. If Consultant cures such default to the Director's reasonable satisfaction prior to the proposed date of termination, then the proposed termination shall be ineffective. If Consultant fails to cure such default prior to the proposed date of termination, then City may terminate its performance under this Agreement as of such date, and Consultant shall deliver all Documents to the Director within seven days of the effective date of the termination. If the City's cost of obtaining completion of the work by other consultants, in combination with other direct costs sustained by the City as a result of the default, exceeds the remaining contract amounts unpaid to Consultant, the City shall not be obligated to make any further payment to Consultant. This provision does not relieve Consultant of any other obligation Consultant may have to the City.

### **9.4. SUSPENSION OF PERFORMANCE**

9.4.1. The Director may suspend Consultant's performance under this Agreement, with or without cause, by notifying Consultant in writing. Consultant shall resume work when directed to do so by the Director. The parties may negotiate and mutually agree in writing to a plan to reduce Consultant's stand-by costs during the suspension period. The City shall not grant any compensation or extension of time under this Section if the suspension results from non-compliance of Consultant or its subcontractors with any requirement of this Agreement.

### **9.5. TERMINATION BY CONSULTANT FOR CAUSE**

9.5.1. Consultant may terminate its performance only upon default of the City. Should such default occur, Consultant shall have the right to terminate all or part of its duties under this Agreement as of the 14th day following the receipt by the City of a notice from Consultant describing such default and intended termination, provided: (1) such termination shall be ineffective if within the 14 day period the City cures the default; and (2) such termination may be stayed beyond such 14 day period, at the sole option of Consultant, pending cure of the default.

## **10. MISCELLANEOUS**

### **10.1. GOVERNING LAWS**

10.1.1. This Agreement shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas.

## **10.2. SUCCESSORS AND ASSIGNS**

10.2.1. This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in Section 10.11. This Agreement does not create any personal liability on the part of any officer or agent of the City.

## **10.3. NON-WAIVER**

10.3.1. If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

10.3.2. An approval by the Director, or by any other employee or agent of the City, of any part of Consultant's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

## **10.4. NOTICES**

10.4.1. All notices to either party to the Agreement must be in writing and must be delivered by hand, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section 1.1 of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

## **10.5. CAPTIONS**

10.5.1. Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

## **10.6. ACCEPTANCES AND APPROVALS**

10.6.1. Any acceptance or approval by the City, or its agents or employees shall not constitute nor be deemed to be a release of the responsibility and liability of Consultant, its employees, agents, Consultants, or suppliers for the accuracy, competency, and completeness for any Documents prepared or services performed pursuant to the terms and conditions of this Agreement, nor shall acceptance or approval be deemed to be an assumption of such responsibility or liability by the City, or its agents and employees, for any defect, error or omission in any Documents prepared or services performed by Consultant, its employees, agents, Consultants or suppliers pursuant to this Agreement.

## **10.7. AMBIGUITIES**

10.7.1. If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

## **10.8. INDEPENDENT CONTRACTOR**

10.8.1. The relationship of the Consultant to the City shall be that of an independent contractor. The City has no control or supervisory powers over the manner or method of Consultant's performance under this Agreement. All personnel Consultant uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Consultant is solely responsible for the compensation of its personnel, including but not limited to the withholding of income, social security, and other payroll taxes and all worker's compensation benefits coverage.

## **10.9. SURVIVAL**

10.9.1. Consultant shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, Section 3.9 –Indemnification and Section 3.10 – Ownership and Use of Documents.

## **10.10. ENFORCEMENT**

10.10.1. The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Consultant shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Consultant's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

## **10.11. BUSINESS STRUCTURE AND ASSIGNMENTS**

10.11.1. Consultant shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in '9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Consultant shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee. Consultant shall not delegate any portion of its performance under this Agreement without the Director's prior written consent.

## **10.12. LANDSCAPE ARCHITECTURAL CONSULTANT'S DEBT**

10.12.1. If Consultant, at any time during the term of this Agreement, incurs a debt, as the word is defined in Section 15-122 of the Houston City Code of Ordinances, it shall immediately notify City Controller in writing. If City Controller becomes aware that Consultant has incurred a debt, it shall immediately notify Consultant in writing. If Consultant does not pay the debt within thirty days of either such notification, City Controller may deduct funds in an amount equal to the debt from any payments owed to Consultant under this Agreement, and Consultant waives any recourse therefore. Consultant shall file a new Affidavit of Ownership, using the form designated by City, between February 1 and March 1 of every year during the term of this Agreement.

## **10.13. LANDSCAPE ARCHITECTURAL CONSULTANT'S ACCOUNTING RECORDS, INSPECTIONS AND AUDITS**

10.13.1. The Director and City Controller shall have the right to examine and review the Consultant's books, records and billing Documents which are directly related to

performance or payment under this Agreement. The Consultant shall maintain such books, records, and billing Documents for four years after the cessation of Consultant 's other services and responsibilities under this Agreement. Nothing in this Article shall affect the time for bringing a cause of action nor the applicable statute of limitations.

#### **10.14. ENTIRE AGREEMENT**

- 10.14.1. This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire Agreement of the Parties. No other Contracts, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

#### **10.15. WRITTEN AMENDMENT**

- 10.15.1. Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Consultant. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

#### **10.16. RISK OF LOSS**

- 10.16.1. Unless otherwise specified elsewhere in this Agreement, risk of loss or damage for each product passes from Consultant to the City upon Acceptance by the City.

#### **10.17. PARTIES IN INTEREST**

- 10.17.1. This Agreement does not bestow any rights upon any third party but binds and benefits the City and Consultant only.

#### **10.18. REMEDIES CUMULATIVE**

- 10.18.1. Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive but are cumulative of all rights and remedies which exist now or in the future. Neither Party may terminate its duties under this Agreement except in accordance with its provisions.

#### **10.19. FORCE MAJEURE**

- 10.19.1. Timely performance by both parties is essential to this Agreement. However, neither party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Consultant. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Agreement. Force Majeure means fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Consultant, riots, court orders, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Consultant to extra Reimbursable Expenses or payment.

- 10.19.2. This relief is not applicable unless the affected party does the following:

- 10.19.2.1. uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
- 10.19.2.2. provides the other party with prompt written notice of the cause and its anticipated effect.

- 10.19.3. The Director will review claims that a Force Majeure that directly impacts the City or Consultant has occurred and render a written decision within 14 days. The decision of the Director is final. If Consultant disagrees with the Director's decision, then the Consultant is permitted to pursue any alleged breach of this Agreement in accordance with its remedies available at law.
- 10.19.4. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.
- 10.19.5. If the Force Majeure continues for more than 30 days from the date performance is affected, the Director may terminate this Agreement by giving 7 days' written notice to Consultant. This termination is not a default or breach of this Agreement. CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT

***{The Rest of This Page Intentionally Left Blank}***

**EXHIBIT A - DIRECT SALARIES AND DIRECT SALARY EXPENSES**

Pursuant to Section 6.1.1 of the Agreement the following table represents the classifications, direct salary rates, cost of benefits, and Direct Salary Expenses of personnel the Consultant anticipates will be directly engaged on a Project.

<b><u>CLASSIFICATION</u></b>	<b><u>DIRECT SALARY RATES</u></b>	<b><u>% COST OF BENEFITS</u></b>	<b><u>DIRECT SALARY EXPENSE</u></b>

## EXHIBIT B- DRUG POLICY COMPLIANCE AGREEMENT

I, \_\_\_\_\_,  
(Name) \_\_\_\_\_  
(Title)  
of \_\_\_\_\_  
( Consultant)

have authority to bind Consultant with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Consultant is aware of and by the time the Agreement is authorized and approved by the City Council, City of Houston, Consultant will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a Notice to Proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Consultant that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and an HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Consultant that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the Agreement with the City of Houston,

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the Agreement with the City and may result in the Agreement not being authorized and approved by the City Council, City of Houston or termination of the Agreement by the City of Houston.

---

(Date)

---

Consultant

---

Signature

---

Title

**EXHIBIT C- CERTIFICATION OF NO SAFETY IMPACT POSITIONS**

**THE STATE OF TEXAS**

**§  
§  
§**

**KNOW ALL MEN BY THESE PRESENTS:**

**THE COUNTY OF HARRIS**

**BEFORE ME**, the undersigned authority, on this day personally appeared

(Affiant)

who being by me duly sworn on his oath stated that he is \_\_\_\_\_

(Title)

of \_\_\_\_\_

(Consultant)

and that no employee safety impact positions, as defined in §5.17 of Executive Order No. 1-31, will be involved in performing the consulting services as provided in the Agreement. Consultant agrees and covenants that it shall immediately notify the City of Houston Director of Personnel if any safety impact positions are established to provide services in performing this City Agreement.

\_\_\_\_\_ (Affiant's Signature)

SWORN AND SUBSCRIBED before me by \_\_\_\_\_

(Affiant)

on \_\_\_\_\_.

(Date)

Notary Public in and for the State of TEXAS

\_\_\_\_\_ (Print or type Notary Public name)

**EXHIBIT D - DRUG POLICY COMPLIANCE DECLARATION****BEFORE ME**, the undersigned authority, on this day personally appeared

(Affiant)

who being by me duly sworn on his oath stated that he is \_\_\_\_\_

(Title)

of \_\_\_\_\_

(Consultant)

the Consultant named and referred to within the Agreement; that Affiant is fully competent and authorized to give this affidavit and that Affiant has personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding 6 months from \_\_\_\_\_ to \_\_\_\_\_, 20\_\_\_\_

Initials	A written Drug Free Workplace Policy has been implemented and employees notified. The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy)
Initials	Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures
Initials	Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines
Initials	Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is _____.
Initials	From _____ to _____ the following testing has occurred:

	Reasonable	Post	
	Random	Suspicion	Accident
<u>Total</u>	_____	_____	_____
Number Employees Tested	_____	_____	_____
Number Employees Positive	_____	_____	_____
Percent Employees Positive	_____	_____	_____

Initials Any employee who tested positive was immediately removed from the City worksite consistent with the Mayor's Policy and Executive Order No. 1-31.

Initials I affirm that falsification or failure to submit this declaration timely in accordance with established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

(Affiant's Signature)

SWORN AND SUBSCRIBED before me by \_\_\_\_\_ on \_\_\_\_\_.  
(Affiant) (Date)

Notary Public in and for the State of TEXAS

(Print or type name)

My Commission Expires: \_\_\_\_\_

## EXHIBIT E - SUBCONTRACTOR'S ASSIGNMENT OF COPYRIGHT

1. Consultant has entered into an Agreement with the **CITY OF HOUSTON, TEXAS** ("City") to provide professional landscape architectural consultant services as well as related support and consulting services ("Services").
2. Subcontractor is or will be providing services for Consultant related to its Agreement with the City.
3. In the course of Subcontractor's work for Consultant related to the provision of Services to the City, Contract Documents and other work products will be produced by Subcontractor for the benefit of the City for which Subcontractor will be compensated by Consultant.
4. Contract Documents include but are not limited to reports, charts, analyses, maps, letters, tabulations, computer programs, exhibits, notes, models, photographs, the original transparencies of all drawings, all graphic and written information prepared or assembled by Subcontractor and all other work products obtained or prepared by Subcontractor as part of its services for Consultant.
5. For and in consideration of the foregoing, the Subcontractor shall grant and assign and hereby does grant and assign to the City all right, title, interest and full ownership worldwide in and to any work, invention and all Contract Documents, or any modifications or improvements to them, and the copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights therein, that are discovered, conceived, developed, written or produced by the Subcontractor, its agents and employees pursuant to its contract with Consultant (collectively "Works"), to have and to hold the same unto the City absolutely.
6. The Subcontractor agrees that neither it nor any of its agents and employees shall have any right to assert or establish a claim or exercise any of the rights embodied in any copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights related to the Works. If requested by the Consultant, the Subcontractor shall place a conspicuous notation upon any such Works which indicates that the copyright, patent, trademark or trade secret thereto is owned by the City of Houston.
7. The Subcontractor shall execute all documents required by the Consultant and the Director of the General Services Department of the City ("Director") to further evidence such assignment and ownership. The Subcontractor shall cooperate with the Consultant and the City in registering, creating or enforcing any copyrights, patents, trademarks, trade secrets or other possessory or proprietary rights arising hereunder. If any assistance by the Subcontractor is requested and rendered pursuant to this Section, the City shall reimburse the Subcontractor for all out-of-pocket expenses incurred by the Subcontractor in rendering such assistance, subject to the availability of funds. On termination of the Subcontractor's contract with Consultant or upon request by the Director, the Subcontractor shall deliver all Works to the City. The Subcontractor agrees that its agents and employees performing work hereunder are bound by the terms of this Exhibit.

IN WITNESS HEREOF, Subcontractor has executed this Assignment as of this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_.

Subcontractor

\_\_\_\_\_  
By:  
Title:

**7 - TASK ORDER CONTRACT FOR  
PROFESSIONAL LANDSCAPE ARCHITECTURAL SERVICES (FEDERAL)**  
**Version: 02-21-2025**

THIS Agreement For Professional Landscape Architectural Services (Agreement) is made on the date countersigned by the City Controller, by and between the **CITY OF HOUSTON, TEXAS** (the "City"), a Texas Home Rule City of the State of Texas principally situated in Harris County, and \_\_\_\_\_, (the "Consultant"), a Texas \_\_\_\_\_.

**1. PARTIES**

**1.1. ADDRESSES**

1.1.1. The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows

**CITY:**

Director of general Services Department  
or Designee  
P O Box 61189  
Houston TX 77208

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Parties agree as follows:

## 1.2. TABLE OF CONTENTS

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### **1.3. PARTS INCORPORATED**

1.3.1. The above-described exhibits are incorporated into this Agreement.

### **1.4. CONTROLLING PARTS**

1.4.1. If a conflict among the sections and exhibits arises, the exhibits control over the sections.

1.4.2. If a conflict among the Agreement and Task Order(s) arises, the Agreement controls over the Task Order(s).

## 1.5. **SIGNATURES**

1.5.1. The Parties have executed this Agreement in multiple copies, each of which is an original. Each person signing this Agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Agreement electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

---

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Tax ID: \_\_\_\_\_

### **ATTEST/SEAL:**

### **CITY OF HOUSTON, TEXAS**

Signed by:

---

City Secretary

---

Mayor

### **APPROVED:**

### **COUNTERSIGNED BY:**

---

Director, General Services  
Department

---

City Controller

### **APPROVED AS TO FORM:**

### **DATE COUNTERSIGNED:**

---

Sr. Assistant City Attorney  
L.D. File No. \_\_\_\_\_

## 2. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set out below:

- 2.1.** "**Additional Services**" services completed by Consultant in support of a Project that are not part of Basic Services, but are included in Article 3 of this Agreement and as further described in the Task Order(s).
- 2.2.** "**Basic Services**" Services completed by the Consultant in support of a Project, included in Article 3 of this Agreement and as further described in the Task Order(s).
- 2.3.** "**City**" is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.4.** "**City Engineer**" is the engineer appointed by the General Services Department to fulfill the role.
- 2.5.** "**Construction Contractor**" means the construction contractor to whom the City has awarded all or part of a construction contract for a Project.
- 2.6.** "**Construction Cost**" is defined in Article 5.
- 2.7.** "Consultant" is defined in the preamble of this Agreement and includes its successors and assigns.
- 2.8.** "**Contract Documents**" all of the graphic and written information prepared or assembled by the Consultant for communicating the design and for administering the bidding and construction of a Project. And as further described in Article 3 of this Agreement.
- 2.9.** "**Director**" means the Director of the General Services Department or his or her designee.
- 2.10.** "**Documents**" means reports, charts, analyses, maps, letters, tabulations, exhibits, notes, models, photographs, specifications, AutoCAD and PDF files of all drawings and plans, and other submittal documents obtained by or prepared by the Consultant as instruments of its services under this Agreement.
- 2.11.** "**Effective Date**" is the date this Agreement comes into force and shall be the date the City Controller countersigns it.
- 2.12.** "**Maximum Total Construction Cost**" is the specific amount as defined in Task Order(s) that may not be exceeded by any estimate of Construction Cost for a Project by the Consultant without the express written approval of the Director.
- 2.13.** "**MWBE**" is defined as Minority and/or Woman Business Enterprise as more clearly defined in Chapter 15, Article V of the City of Houston Code of Ordinances.
- 2.14.** "**OBO Director**" means the Director of the Mayor's Office of Business Opportunity or of a successor department or such other person as may be designated from time to time by the Mayor.
- 2.15.** "**Program**" means all those quantitative and/or qualitative requirements for a Project that must be met or satisfied by the design for a Project.
- 2.16.** "**Project**" as identified in Task Order(s).

**2.17.** **"Project Schedule"** the schedule of project activities and events, showing initiation point, duration, and ending points in a format approved by the Director. The schedule will indicate time to be allowed for reviews by the City staff. A Project Schedule shall be drafted by Consultant in consultation with the Director, approved by the Director, and updated monthly at the time of invoice submittal. The durations must be consistent with the durations set out in Task Order(s).

**2.18.** **"Reimbursable Expenses"** An expense related to the performance of Additional Services that are negotiated and agreed upon by the Consultant and the Director prior to the expenses being incurred. The compensation for each such Reimbursable Expense shall never exceed this agreed upon amount. Reimbursable Expenses are to be paid in addition to the compensation for Additional Services and include actual expenditures made by the Consultant and the Consultant's employees and subcontractors, including any sales tax Consultant is legally required to pay, in the interest of the Project while performing services requested by the Director pursuant to the following:

- 2.18.1. If authorized in advance in writing by the Director, travel costs in connection with out-of-town travel, to points outside of the greater City of Houston area, not to exceed the amounts established under the City's then current travel reimbursement policy for its employees,
- 2.18.2. Fees paid for securing approval of authorities having jurisdiction affecting the Project,
- 2.18.3. Expense of reproductions, postage and handling of drawings, specifications and other Documents. Expenses for reproductions for submittals or correction of submittals required under Phase I or Phase II, reproductions for the office use of the Consultant and the Consultant's subcontractors are not reimbursable,
- 2.18.4. If authorized in advance by the Director, the expense of overtime work requiring higher than regular rates,
- 2.18.5. If authorized in advance by the Director, the expense of renderings, models and mock-ups,
- 2.18.6. If authorized in advance by the Director, the expense of filing documents for governmental approval under Sections 3.2.1.5 and 3.3.5,

**2.19.** **"Substantial Completion"** is that point in the construction of a project or designated portion thereof where the City Engineer certifies that construction is sufficiently complete, in accordance with the Contract Documents, that the City may occupy a Project, or a designated portion thereof, for the use for which it was intended.

**2.20.** **"Task Order"** is an individual project, with a defined scope, fee, and time of performance, agreed to by the Director and Consultant.

### **3. CONSULTANT'S SERVICES AND RESPONSIBILITIES**

#### **3.1. GENERAL**

- 3.1.1. The Consultant agrees to provide prompt and efficient professional services for the Project(s) assigned by the Director through one or more Task Orders for the fees specified in this Agreement and Task Order(s) and in accordance with each Project Schedule. A Project Schedule shall be drafted by the Consultant, in consultation with the City staff, approved by the Director and updated monthly at the time of invoice submittal. The Consultant shall coordinate his performance of the services hereunder with the Director and such other

persons as the Director may specify. The Consultant shall make periodic verbal or written reports and recommendations to the Director with respect to conditions, transactions, situations or circumstances encountered by the Consultant relating to the services to be performed under this Agreement and shall attend meetings which the Director determines to be necessary. The Consultant shall, upon written request, provide the Director with a copy of Documents prepared by the Consultant or made available to it as a result of its performance under this Agreement.

3.1.2. Task Order(s) must include the following:

- 3.1.2.1. Agreement number and Consultant's name, address, and telephone number;
- 3.1.2.2. Task Order number and date;
- 3.1.2.3. Scope of services specifically identifying the Basic Services and Additional Services to be performed by Consultant;
- 3.1.2.4. Project Description,
- 3.1.2.5. Maximum Total Construction Cost for the Project,
- 3.1.2.6. Time of performance consistent with Section 3.7,
- 3.1.2.7. Identity of the Consultant's key personnel assigned to the Task Order who will perform services;
- 3.1.2.8. City project manager assigned to Task Order;
- 3.1.2.9. A breakout of fees by each phase of Basic Services and each Additional Service.
- 3.1.2.10. Method of payment, either a fixed lump sum agreement or an hourly-based agreement with not-to-exceed amounts for each service;
- 3.1.2.11. Balance of funds remaining in the Agreement;
- 3.1.2.12. Signatures of the Director and Consultant,
- 3.1.2.13. Any other information necessary to identify and perform the services or as otherwise may be required by the Director.

3.1.3. The Consultant shall proceed with performance of its services with full knowledge and understanding that the Maximum Total Construction Cost for a Project shall not exceed the sum(s) set out in Task Order(s) without the express written approval of the Director. The Consultant shall plan and design a Project in such a manner that the Consultant's best professional estimate of probable Construction Cost does not exceed the Maximum Total Construction Cost. If at any time during a Project, the Consultant's estimate of Construction Cost, for all work designed and specified, exceeds this amount, the Consultant shall immediately notify the Director. The Director may by written notice either increase the Maximum Total Construction Cost or obtain an agreed upon reduction in a Project scope. For any Maximum Total Construction Cost or budget revision, without an increase in the scope of a Project as defined in Task Order(s), there shall be no increase in the Consultant's

fee. In the event the parties cannot agree on a revised Maximum Total Construction Cost this Agreement may be terminated according to Article 9 of this Agreement.

- 3.1.4. The Consultant shall designate a project manager who will be the Consultant's liaison for this Agreement.
- 3.1.5. The Consultant's Basic Services consist of those services performed by Consultant, Consultant's employees and Consultant's subcontractors as enumerated in the four phases described in Sections 3.2 through 3.5 and include normal civil, structural, mechanical and electrical engineering services to meet the minimum requirements of the City Code of Ordinances. The Consultant agrees to perform the services set forth below for each Phase as authorized in Task Order(s).
- 3.1.6. If an actual or potential conflict arises between the interests of the City and the interests of the Consultant or other clients represented by Consultant, Consultant shall immediately notify the Director by telephone. If the Director in his sole discretion consents to Consultant's continued representation of such other clients, he shall notify the Consultant in writing. If the Director does not issue written consent within three business days of receipt of Consultant's notice, Consultant shall immediately terminate its representation of the other client whose interests are or may conflict with those of the City.
- 3.1.7. Consultant shall notify the Director promptly of any factor, occurrence or event coming to its attention that Consultant believes is likely to adversely affect its ability to meet any of its obligations hereunder or to materially delay delivery of any Document or service provided for herein and in a Project Schedule, in such event, the Consultant shall promptly consult with the Director regarding a plan of action to prevent, eliminate or remedy such default or delay. Any request by Consultant to modify a Project Schedule shall be made in accordance with this Section.
- 3.1.8. **CONSULTANT SHALL MAKE TIMELY PAYMENTS TO ALL SUBCONTRACTORS, PERSONS AND ENTITIES SUPPLYING LABOR, MATERIALS OR EQUIPMENT FOR THE PERFORMANCE OF THIS AGREEMENT. CONSULTANT AGREES TO PROTECT, DEFEND, AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONSULTANT'S FAILURE TO MAKE SUCH PAYMENTS.**
- 3.1.9. Consultant shall be responsible for services performed by subcontractors to the same extent as if the services were performed by Consultant. Consultant shall replace any subcontractor when requested by the Director. Consultant shall provide the Director with a copy of any of its subcontractor's subcontracts at Director's request.
- 3.1.10. *Compliance With Laws*
  - 3.1.10.1. Consultant shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances in its performance under this Agreement.
  - 3.1.10.2. Consultant shall comply with the Americans with Disabilities Act of 1990 as amended (ADA) and Texas Architectural Barriers Act and all regulations relating to either statute.

- 3.1.10.3. In anticipation of the City's potential use or application for reimbursement of restricted federal funds to pay for some or all of the services provided under this Agreement, Exhibit F is incorporated into this Agreement. The Parties agree to take such action as is necessary to amend this Agreement, if the Director determines that it is necessary to incorporate additional state or federal laws and regulations or grant requirements into this Agreement. Any ambiguity in this Agreement shall be resolved to permit the parties to comply with the applicable state and federal laws and regulations and grant requirements.
- 3.1.11. Consultant's performance shall conform to the professional standards prevailing in Harris County, Texas with respect to the scope, quality, due diligence, and care of the service and products Consultant provides under this Agreement.

## **3.2. PHASE I: DESIGN**

- 3.2.1. **General.** The Consultant shall furnish the Director with an electronic copy in a format specified by the Director of all drawings, specifications, reports and other required documents.
  - 3.2.1.1. The Consultant shall proceed with Phase I upon receipt of written authorization by the Director. The Consultant shall submit to the Director, within 10 days of the Notice to Proceed with Phase I, a revised Project Schedule, updated to reflect firm dates for activities and reviews set forth therein.
  - 3.2.1.2. The Consultant shall attend bi-weekly preliminary conferences with the Director and such others as the Director may designate to review the Program furnished by the City.
  - 3.2.1.3. The Consultant has reviewed the site and the scope of services as set forth in the Task order(s), determined its feasibility within established budgetary constraints, and arrived at an understanding of such requirements with the Director. The Consultant acknowledges that the Maximum Total Construction Cost is reasonable for a Project.
  - 3.2.1.4. Based on the Program and Project budget requirements, the Consultant shall prepare, for approval by the Director, the Phase I - Schematic Design.
  - 3.2.1.5. The Consultant shall commission and direct registered professional engineers to assume responsibility for the civil, structural, mechanical, and electrical engineering aspects of a Project throughout its design and construction.
  - 3.2.1.6. The Consultant shall, on behalf of the City, file all applications for utilities commitments and furnish any additional information necessary to obtain utility commitments.
- 3.2.2. **Phase I - Design.** The Consultant shall furnish to the Director an electronic copy in a format specified by the Director of drawings, outline specifications, reports, recommendations, analyses and a preliminary estimate of Construction Cost based on the Director's approval Phase I Design Documents. This submission shall include but not be restricted to the following where applicable:

- 3.2.2.1. General statement or schedule of proposed materials, systems and equipment proposed for incorporation into the project(s);
- 3.2.2.2. Outline specifications of principal materials, systems and equipment proposed for incorporation into the Project construction; and
- 3.2.2.3. Preliminary estimate of Construction Cost of the Project in sufficient detail to demonstrate its inclusiveness and to demonstrate the proposed level of quality throughout all aspects of the Project construction.
- 3.2.2.4. General listing of the types, quantities and sizes of spaces included in the design. Prepare a comparison of these spaces with those listed in the Program, if there is a variance.
- 3.2.2.5. Scaled drawings of the site plan, floor plan(s), exterior elevations and transverse and longitudinal sections through the building (if applicable).
- 3.2.2.6. Preliminary estimate of the probable Construction Cost of the Task Order, based on proposed systems and quantities.
- 3.2.2.7. General statement or schedule of proposed materials.
- 3.2.2.8. General statement of proposed structural system or systems in sufficient detail to demonstrate that spatial requirements have been accommodated and to provide a valid basis for the preliminary estimate of Construction Cost.
- 3.2.2.9. General statement of proposed mechanical, electrical and plumbing systems, in sufficient detail to demonstrate that spatial requirements have been accommodated and to provide a valid basis for the preliminary estimate of Construction Cost.

3.2.3. **Revisions.** The Consultant shall make modifications to the Phase I Design Documents as may be required to obtain approval of the Director and submit to the Director revised Phase I Design Documents in a format specified by the Director.

### **3.3. PHASE II: DESIGN**

- 3.3.1. The Consultant shall proceed with the Phase II Contract Documents upon the Director's written approval of the Phase I Design and upon Director's written authorization to proceed.
- 3.3.2. Based upon approved Phase I Design Documents and any adjustments authorized by the Director in the Program or Project budget, the Consultant shall prepare, for approval by the Director, Contract Documents suitable for solicitation of competitive construction bids, for incorporation into a contract for construction of a Project and shall make clarifications and revisions necessary to obtain the building permit. It is the responsibility of the Consultant to ensure that the Contract Documents comply with all permitting requirements from all jurisdictions related to a Project. Contract Documents are those Documents prepared for the purpose of obtaining bids and guiding the construction of a Project. Contract Documents shall generally include but not be restricted to the following.
  - 3.3.2.1. Drawings of plans, elevations, sections and details defining the dimensions and spatial relationships of all elements of a Project.

- 3.3.2.2. A written Project manual, which includes bidding requirements, sample forms, conditions of the construction contract and specifications. The City will provide Consultant bidding requirements, sample forms and conditions of the construction contract for Consultant's inclusion in a Project manual. Specifications shall define the general requirements for a Project, written descriptions of the technical nature of materials, equipment, construction systems, standards and workmanship. The Consultant shall not include in either the general requirements or in other technical specification sections requirements that conflict with the bidding requirements, sample forms and conditions of the construction contract provided by the City. Dollar allowances shall not be used in a Project manual.
- 3.3.2.3. To the extent practicable for each item that requires a specific designation, the Consultant shall specify the products of at least three manufacturers of each material and manufactured item acceptable for use in a Project.
- 3.3.2.4. The specifications shall also provide means by which the successful bidder can submit for approval products other than those specified which it considers equivalent to those specified in quality, including durability, serviceability, design, appearance, function, finish, performance, size and weight. The Consultant shall advise the Director as to whether products other than those listed in the specifications are equivalent.
- 3.3.3. The Consultant shall attend review conferences with the Director and such others as the Director may designate to obtain the Director's approval of the development of the Contract Documents.
- 3.3.4. The Consultant shall advise the Director of any adjustments to previous estimates of Construction Cost indicated by changes in the requirements or general market conditions.
- 3.3.5. The Consultant shall, on behalf of the City, file all applications and Documents necessary to obtain approval of governmental authorities having jurisdiction over a Project and furnish any additional information necessary to obtain approvals. This shall include, but not be limited to, submittal of drawings to the Texas Department of Licensing and Regulations, Architectural Barriers Section for review, and Building Permit application. The Consultant shall provide the City with copies of Proof of Submission and Proof of Inspection filings.
- 3.3.6. The Consultant shall submit for the Director's approval a final estimate of the Construction Cost of a Project, based upon fully developed Contract Documents.
- 3.3.7. The Consultant shall furnish to the Director an electronic copy in a format specified by the Director of fifty percent complete documents and fully developed, permittable Contract Documents for review by the Director. In addition, the Consultant shall submit an electronic copy in a format specified by the Director at each review stage. The Consultant shall incorporate all review comments, if any, and furnish to the Director an electronic copy in a format specified by the Director of Contract Documents.
- 3.3.8. The Consultant and Consultant's subcontractors shall attend the Pre-Bid Conference and respond to bidders' questions. If required by the Director, the Consultant shall issue Addenda to the Contract Documents during the bid period as necessary to respond to bidders'

questions and to make clarifications. The Consultant shall evaluate bids and bidders only when the Director requests such evaluations in writing.

### **3.4. PHASE III: CONSTRUCTION SERVICES**

- 3.4.1. The Consultant shall proceed with Phase III Construction Services upon receipt of the notice to proceed to the Construction Contractor to commence construction.
- 3.4.2. Unless otherwise provided in this Agreement, the Consultant shall provide limited administration of the construction contract as set forth below.
- 3.4.3. The Consultant shall be a consultant of the City during Phase III Construction Services and shall advise and consult with the City. Instructions to the Construction Contractor by the City shall also be sent to the Consultant. The Consultant shall have authority to act on behalf of the City only to the extent provided in this Agreement.
- 3.4.4. The Consultant shall visit the site at intervals appropriate to the stage of construction, or as otherwise agreed in writing by the City and the Consultant, to become generally familiar with the progress and quality of the work and to determine, in general, if the work is proceeding in a manner indicating that the work when completed will be in accordance with the Contract Documents. The Consultant shall provide the Director written reports of its on-site observations regarding the progress and quality of the work. However, the Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work. Based on such on-site observations, the Consultant shall keep the Director informed of the progress and quality of the work, and shall notify the Director immediately in writing, of any defects and deficiencies in the Construction Contractor's work and work that is not performed in accordance with Contract Documents.
- 3.4.5. The Consultant shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, which are solely the Construction Contractor's responsibility under the construction contract. Except as otherwise provided herein, the Consultant shall not be responsible for the Construction Contractors schedules or failure to carry out the work in accordance with the Contract Documents. Except as otherwise provided herein, the Consultant shall not have control over or charge of acts or omissions of the Construction Contractor, the Construction Contractor's subcontractors, or the Construction Contractor's agents or employees, or of any other persons performing any portion of the work.
- 3.4.6. The Consultant shall always have access to the work wherever it is in preparation or progress.
- 3.4.7. The Consultant shall attend conferences at a Project site with the Director and such others as the Director may designate, to assist the City in the administration of the construction contract.
- 3.4.8. When requested by the Director, the Consultant shall assist the Director in determining the amounts owed to the Construction Contractor based on Consultant 's on-site observations and on evaluations of the Construction Contractor's applications for payment and shall recommend to the Director issuance of certificates for payment to the Construction Contractor.

- 3.4.9. The Consultant's approval of the Construction Contractor's application for payment shall constitute the Consultant's representation to the City that based upon the Consultant's on-site observations as provided in Section 3.4.4 and upon the data comprising the Construction Contractor's application for payment, that the work has progressed to the point indicated; and that, to the best of the Consultant's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent test required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to specific qualifications expressed by the Consultant. The Consultant's approval of the Construction Contractor's application for payment shall further constitute a representation that the Construction Contractor is entitled to payment in the certified amount. However, the Consultant's approval of the Construction Contractor's application for payment shall not be a representation that the Consultant has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the work, (2) reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by the City to substantiate the Consultant's right to payment or (3) ascertained how or for what purpose the Consultant has used money previously paid pursuant to the Agreement.
- 3.4.10. The Consultant shall interpret the requirements of the Contract Documents. The Consultant shall render interpretations necessary for the proper execution or progress of the work to the Director with reasonable promptness upon written request of either the Director or the Construction Contractor; and, if requested by the Director, shall render written advice to the Director within a reasonable time, on all claims, disputes and other matters in question between the City and the Construction Contractor relating to the execution or progress of the work or interpretation of the Contract Documents.
- 3.4.11. Interpretations and advice of the Consultant shall be consistent with the intent of the Contract Documents, be reasonably inferable from the Contract Documents, and shall be in written or graphic form. When making such interpretations and giving such advice, the Consultant shall not show partiality to either City or the Construction Contractor and shall not be liable for the result of any interpretation or advice so rendered in good faith.
- 3.4.12. The Consultant shall recommend to the Director to reject work which does not conform to the Contract Documents. Whenever the Consultant considers it necessary or advisable for the implementation of the intent of the Contract Documents, the Consultant shall recommend to the Director, to require special inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such work be then fabricated, installed or completed. However, neither this authority of the Consultant nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Consultant to the Construction Contractor, Construction Contractor's subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the work.
- 3.4.13. The Consultant shall review and recommend approval to the Director or take other appropriate action upon Construction Contractor's submittals such as shop drawings, product data and samples, but only for the limited purpose of checking for conformance information given and the design concept expressed in the Contract Documents. The Consultant's action shall be taken with such reasonable promptness as to cause no delay in the construction of a Project by the City or by separate Construction Contractors, while allowing sufficient time

in the Consultant 's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Construction Contractor, all of which remain the responsibility of the Construction Contractor to the extent required by the Contract Documents. The Consultant 's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Consultant, of construction means, methods, techniques, sequences or procedures. The Consultant 's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Consultant shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

- 3.4.14. The Consultant shall submit to the Director a schedule of colors and finishes for a Project which the Consultant has selected from approved submittals. Wherever practicable, Consultant shall supplement schedule of colors and finishes with color chips, swatches and samples. Provided the Construction Contractor has submitted in a timely manner acceptable samples of products he proposes to use, the Consultant shall submit a schedule of colors and finishes with sufficient lead time to permit a thirty-day review/approval period without risk of delay and the timely incorporation of the finishes, materials and similar items with other aspects of a Project. During the review period, the Consultant shall confer with the Director and such others as the Director may designate and make adjustment to the schedule of colors and finishes as necessary to obtain approval by the Director.
- 3.4.15. The Consultant shall review Construction Contractor's requests and make recommendations to the Director. When requested by the Director, the Consultant shall prepare for the Director's approval and execution a change order or work change directive in accordance with the Contract Documents, and shall have authority, with the concurrence of the Director, to order minor changes in the work which do not involve an adjustment in the construction contract amount or an extension of the construction contract time for completion and which are not inconsistent with the intent of the Contract Documents. For the purpose of this section, "construction contract amount" shall be that amount and "construction contract time" for completion shall be that period as they appear in the Contract Documents initially or as they shall have been lawfully and legitimately amended under the terms of that contract at the time of such Construction Contractor's request. If the changes to the Contract Documents require jurisdictional approval, the Consultant is responsible for obtaining such approval.
- 3.4.16. The Consultant shall conduct inspections to determine and recommend to the Director the dates of Substantial Completion and the date of final completion, and shall receive and forward to the Director for the Director's review, written warranties, guarantees, releases, operating instructions and maintenance manuals, keys, equipment data and related documents required by the Contract Documents and assembled by the Construction Contractor, and shall approve the Construction Contractor's application for final payment upon compliance with the requirements of the Contract Documents.
- 3.4.17. The extent of the duties, responsibilities, and limitations of authority of the Consultant shall not be restricted, modified or extended without written notice by the City to the Consultant and Construction Contractor.

3.4.18. Before final payment of Phase III Construction Services compensation, the Consultant shall furnish to the Director, a complete set of AutoCAD V2013 (or another format as specified by the Director) and PDF files of drawings and specifications. The digital files shall reflect significant changes in the work including changes in scope made during construction, based on marked-up Project record drawings maintained by the Construction Contractor at a Project site, and drawings and other data furnished by the Construction Contractor to the Consultant. The Consultant shall be able to rely on the accuracy of such changes and other information supplied by the Construction Contractor and will not be required to perform studies to determine the completeness of such recorded changes, if any, supplied by the Construction Contractor.

### **3.5. PHASE IV: POST-CONSTRUCTION SERVICES**

3.5.1. The Consultant shall examine a Project in the company of the Construction Contractor, and the Director or such others as the Director may designate, no less than thirty days and no more than forty-five days prior to the expiration of the one-year correction period, established in the Contract Documents. On or before the seventh day after such field observations, the Consultant shall furnish the Director a written report identifying items which require repair or replacement under the one-year correction period provisions of the Contract Documents.

### **3.6. ADDITIONAL SERVICES**

3.6.1. The following Additional Services shall be performed by the Consultant, if authorized by the Director, in addition to Consultant's Basic Services and shall be paid for by the City as provided for in Section 6.7 of this Agreement. Additional Services shall only be provided when necessary and related to the purposes of this Agreement, when authorized in writing by the Director, and when sufficient funding has been allocated for such services.

3.6.1.1. Providing analyses of the City's needs and programming the requirements of a Project beyond the scope of services provided in Section 3.2.2.

3.6.1.2. Providing financial, feasibility or other special studies.

3.6.1.3. Providing planning surveys, site evaluations, environmental studies or comparative studies of prospective sites, and preparing special surveys, studies and submissions required for approvals of governmental authorities or others having jurisdiction over a Project.

3.6.1.4. Providing services related to future facilities, systems and equipment which are not intended to be constructed during the Phase III Construction Services.

3.6.1.5. Providing services to investigate existing conditions or facilities or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the City.

3.6.1.6. Preparing Documents for multiple bid packages or providing extra services in connection with bidding, negotiation or construction prior to the completion of the Phase II Contract Documents.

3.6.1.7. Providing detailed estimates of Construction Cost beyond the scope of estimate of Construction Cost based on current area, volume, or similar unit costs as

required in Sections 3.2.3.5, 3.3.4 and 3.3.6; and providing analyses of owning and operating costs, or detailed quantity surveys or inventories of material, equipment and labor.

- 3.6.1.8. Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.
- 3.6.1.9. Providing services for planning leased tenant or rental spaces.
- 3.6.1.10. Making revisions in drawings, specifications or other Documents when such revisions are inconsistent with written approvals or instructions previously given, or during Phase II, making revisions to the Contract Documents required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such Documents or due to other causes not within the control of the Consultant.
- 3.6.1.11. Preparing drawings, specifications and supporting data and providing other services in connection with a change to approved Phase II Contract Documents to the extent that such services are in excess of the Basic or other Additional Services required of the Consultant pursuant to this Agreement and provided such changes are not necessitated by an act or omission of the Consultant. In the event a change order is caused by an act or omission of the Consultant, the Consultant will be required to prepare such drawings and specifications and supporting data and obtain jurisdictional approvals at no expense to the City.
- 3.6.1.12. Making investigations, surveys, valuations, inventories or detailed appraisals of existing facilities and services required in connection with construction performed by the City.
- 3.6.1.13. Providing consultation concerning replacement of any work damaged during construction by fire or any other cause not under the Consultant's control and furnishing services as may be required in connection with the replacement of such work.
- 3.6.1.14. Providing services made necessary by the default of the Construction Contractor, or by major defects or deficiencies in the work of the Construction Contractor, or by failure of performance of either the City or Construction Contractor under the contract for construction.
- 3.6.1.15. Providing extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
- 3.6.1.16. Providing services of subcontractors for other than the normal –Consultant Services, civil engineering, structural engineering, mechanical engineering and electrical engineering services for the Task Order.
- 3.6.1.17. Providing additional construction phase services in the event that 1) the number of calendar days stipulated in the Contract Documents for Substantial Completion is exceeded beyond the time period set out in Section 56.2.2 due to no fault of the

Consultant or 2) the number of calendar days allowed for Substantial Completion under the Contract Documents is increased by change order beyond the time period set out in Section 6.2.2 due to no fault of the Consultant.

- 3.6.1.18. Providing inspection of a Project in the company of the Construction Contractor, and the Director, or such others as the Director may designate, no less than thirty days and no more than forty-five days prior to expiration of any special Project warranty, but after expiration of the one-year correction period, as defined in the general conditions of the construction contract, established in the Contract Documents. On or before the seventh day after such inspection, the Consultant shall provide the Director a written report enumerating items which require repair or replacement under the special Project warranty provisions of the Contract Documents.
- 3.6.1.19. Providing land survey services to supplement any legal description and site information provided by the City and to include, but not be limited to, as applicable to a Project, grades of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, deed restrictions and contours of the site, locations, dimensions and complete data pertaining to existing buildings, other improvements and trees; and information concerning available services and utility lines both public and private, above and below grade, including invert and depths in accordance with Project requirements. The Consultant shall commission a survey to be prepared by a registered land surveyor acceptable to the Director. The survey shall be signed and sealed by the registered land surveyor.
- 3.6.1.20. Providing geotechnical investigation and engineering services required for the design of a Project. Such services may include, as applicable to a Project, test borings, test pits, soil bearing values, percolation tests, and similar investigations and engineering services with reports and appropriate recommendations in accordance with Project requirements. The Consultant shall commission a geotechnical investigation to be completed by a registered geotechnical subcontractor acceptable to the Director. The geotechnical report and appropriate recommendations shall be signed and sealed by the registered geotechnical engineer.
- 3.6.1.21. Providing Cultural Resource Reconnaissance or Surveying services as defined in the General Rules of Practice and Procedures, Chapter 41 of the Texas Antiquities Committee, to supplement the site information provided by the City and to identify potential historic or prehistoric sites in Project areas to be affected by improvements planned as part of a Project. The reconnaissance shall be conducted in accordance with procedures promulgated by the Texas Antiquities Committee in conformance with the Antiquities Code of Texas and signed by a professional archaeologist acceptable to the Texas Antiquities Committee and the Director. For the purposes of this Agreement, the Director is authorized to approve the archaeologist's permit applications for such Cultural Resource Reconnaissance or Surveys on behalf of the City.
- 3.6.1.22. Providing data processing and photographic production techniques when used in connection with another Additional Service.

- 3.6.1.23. Providing other professional services beyond the scope of Basic Services of this Agreement which are necessary and related to the purposes of this Agreement.
- 3.6.2. Whenever the Consultant, in the course of performing Basic Services, is required to present recommendations to the Director with respect to the advisability of, or the need for, any Additional Service, such recommendation shall include a recommended scope for the Additional Services and the recommended fee and expenses. If the Consultant recommends subcontract services, the recommendation shall also include the names of the subcontractor(s) recommended by the Consultant. A maximum fee for each such subcontractor's service shall be proposed by the Consultant at the time Additional Services requiring such expenses are requested by the Director and shall be negotiated and agreed upon by the Consultant and the Director prior to the expense being incurred. The compensation for each such subcontractor's service expense shall never exceed this agreed upon maximum amount.

### **3.7. TIME**

- 3.7.1. The Consultant shall perform Basic and Additional Services as expeditiously as is consistent with professional skill and care, and the orderly progress of the work. Upon issuance of a Task Order, the Consultant shall submit for Director's approval a calendar schedule of Consultant's services not exceeding the time limits provided in the Task order, and which shall include allowances for periods of time required for City's review and for approval of submissions by authorities having jurisdiction over a Project. Time limits established by a Task order shall not, except for reasonable cause, be exceeded by Consultant or by the City.
- 3.7.2. Extensions of any of the time-of-performance commitments by the Consultant in a Task Order shall be granted only by the Director, in written form, and shall have the same force and effect as the time-of-performance commitments originally stated in the Task Order.
- 3.7.3. The Consultant acknowledges and agrees that any services it provides to the City after the completion date established in a Project Schedule, unless an extension of time has been granted, will be deemed to be gratuitously provided, and the City shall have no obligation to pay for such services unless the City Council approves an agreement to do so in its sole discretion.

### **3.8. INSURANCE.**

- 3.8.1. Consultant shall provide and maintain certain insurance and Endorsements in full force and effect at all times during the term of this Agreement and any extensions thereto. Such insurance is described as follows.
  - 3.8.1.1. **Risks and Limits of Liability.** Consultant shall maintain the following insurance coverages in the following amounts:

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<u>COVERAGE</u>	<u>LIMIT OF LIABILITY</u>
Workers' Compensation	<ul style="list-style-type: none"> <li>• Texas Statutory for Workers' Compensation</li> </ul>
Employer's Liability	<ul style="list-style-type: none"> <li>• Bodily Injury by accident \$1,000,000 (each accident)</li> <li>• Bodily Injury by Disease \$1,000,000 (policy limit)</li> <li>• Bodily Injury by Disease \$1,000,000 (each employee)</li> </ul>
Commercial General Liability: Including Broad Form Coverage, Bodily Injury and Property Damage (Products and Completed Operations required when Physical Operations performed)	<ul style="list-style-type: none"> <li>• \$1,000,000 Limit each Occurrence and \$2,000,000 aggregate per 12-month period</li> </ul>
Automobile Liability	<ul style="list-style-type: none"> <li>• \$1,000,000 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos</li> </ul>
Professional Liability	<ul style="list-style-type: none"> <li>• \$2,000,000 Limit per claim/aggregate</li> </ul>
Excess Liability applicable to Commercial General and Automobile Liability	<ul style="list-style-type: none"> <li>• \$1,000,000 Limit each occurrence/aggregate</li> </ul>
<b>Aggregate Limits are per 12-month policy period unless otherwise indicated.</b>	

3.8.2. **Insurance Coverage.** At all times during the term of this Agreement and any extensions or renewals, Consultant shall provide and maintain insurance coverage that meets the Agreement requirements. Prior to beginning performance under the Agreement, at any time upon the Director's request, or each time coverage is renewed or updated, Consultant shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Consultant shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Consultant waives any claim it may have for premiums or deductibles against the City, its officers, agents, or employees. Consultant shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

3.8.3. **Form of insurance.** The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Agreement. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide.

3.8.4. **Required Coverage.** The City shall be an Additional Insured under this Agreement, and all policies except Professional Liability and Worker's Compensation must name the City as an

Additional Insured. Consultant waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Consultant's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Agreement. If professional liability coverage is written on a "claims made" basis, Consultant shall also provide proof of renewal each year for two years after substantial completion of a Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for a Project covered by this Agreement with a duration of two years after substantial completion.

3.8.5. **Notice. CONSULTANT SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED.** Within the 30-day period, Consultant shall provide other suitable policies in order to maintain the required coverage. If Consultant does not comply with this requirement, the Director, at his or her sole discretion, may immediately suspend Consultant from any further performance under this Agreement and begin procedures to terminate for default.

### **3.9. INDEMNIFICATION**

3.9.1. **CONSULTANT AGREES TO AND SHALL, TO THE EXTENT PERMITTED BY TEXAS LOCAL GOVERNMENT CODE §271.904, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY ARISING AS A RESULT OF CONSULTANT'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONSULTANTS', OR SUBCONTRACTORS' ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS IN CONNECTION WITH ITS PERFORMANCE UNDER THIS AGREEMENT, WHETHER CONSULTANT IS IMMUNE FROM LIABILITY OR NOT. CONSULTANT SHALL INDEMNIFY AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. THE INDEMNITY SHALL APPLY WHETHER OR NOT THE EVENT IS CAUSED BY THE CONTRIBUTORY NEGLIGENCE OF THE CITY.**

### **3.10. OWNERSHIP OF DOCUMENTS**

3.10.1. Consultant shall grant and assign and hereby does grant and assign to the City all rights, title, interest and full ownership worldwide in and to any work, invention and all Documents, including Contract Documents, or any modifications or improvements to them, and the copyrights, patents, trademarks, trade secrets, source and object codes and any other possessory or proprietary rights therein, that are discovered, conceived, developed, written or produced by the Consultant, its agents, employees, contractors and subcontractors pursuant to this Agreement (collectively, the "Works"), to have and to hold the same unto the City absolutely. This right of ownership shall include the City's ability to modify, sell, or license all computer programs, including all access to programming codes necessary to do so.

- 3.10.2. Consultant agrees that neither it nor any of its agents, employees, contractors or subcontractors shall have any right to assert or establish a claim or exercise any of the rights embodied in any copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights related to the Works. If requested by the Director, the Consultant shall place a conspicuous notation upon any such Works which indicates that the copyright, patent, trademark or trade secret thereto is owned by the City of Houston.
- 3.10.3. Consultant shall execute all documents required by the Director to further evidence such assignment and ownership. Consultant shall cooperate with the City in registering, creating or enforcing any copyrights, patents, trademarks, trade secrets or other possessory or proprietary rights arising hereunder. If any assistance by the Consultant is requested and rendered pursuant to this Section, the City shall reimburse Consultant for all out-of-pocket expenses incurred by Consultant in rendering such assistance. On termination of this Agreement or upon request by the Director, Consultant shall deliver all Works to the City. Consultant shall obtain written agreements in the form specified in Exhibit E from its agents, contractors and subcontractors performing work hereunder which bind them to the terms contained in this Section.
- 3.10.4. The Consultant may, however, retain copies of such Documents. The Consultant shall have the right to use such copies internally, but the Consultant may not sell, license or otherwise market such Documents. Upon request by the Director, the Consultant shall deliver such Documents to the City.
- 3.10.5. Consultant does not represent that the Documents are or are intended to be, suitable for use on other Projects or extensions of a Project, to the extent that the Documents are site-specific. Any modification to the Consultant's work product or unintended use of same will be at the sole risk of the City.

### **3.11. PARTICIPATION IN BIDDING AND CONSTRUCTION**

- 3.11.1. Consultant agrees not to participate in the bidding process as a bidder and not to engage in construction of a Project as a contractor or subcontractor. By written agreement, Consultant shall require each subcontractor or consultant for Project engineering services to be bound by the requirements of this Section.

### **3.12. EQUAL EMPLOYMENT OPPORTUNITY**

- 3.12.1. Consultant shall comply with the City's Equal Employment Opportunity Ordinance as set out in Section 15-17 of the Code of Ordinances.

### **3.13. MINORITY AND WOMEN BUSINESS ENTERPRISES PARTICIPATION**

- 3.13.1. Consultant shall comply with the City's Minority and Women Business Enterprise ("MWBE") programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances, and the applicable Office of Business Opportunity's ("OBO") Policies and Procedures. Consultant shall make good faith efforts to award subcontracts or supply agreements in at least 5% of the value of this Agreement to MWBEs ("Stated MWBE Goal(s)"). If the Consultant is a certified MBE or WBE, Consultant may count toward goals the work that it commits to perform with its own work force, capped at 50% of the total advertised goal. Consultant acknowledges

that it has reviewed the requirements for good faith efforts on file with OBO and will comply with them.

- 3.13.2. For purposes of this section, "Contract Year" means a 12-month period during the term of the agreement commencing on the Countersignature Date of this Agreement and each anniversary thereof. If the term of this Agreement exceeds one Contract Year and Consultant's MWBE participation level in a Contract Year is less than the Stated MWBE goal(s), then within 30 calendar days of the end of each Contract Year Consultant must provide a written explanation to both the Director and Office of Business Opportunity Director ("OBO Director") of the following: (1) the discrepancy between Consultant's MWBE participation level and the Stated MWBE Goal(s); (2) the reason for the discrepancy, and (3) Consultant's good faith efforts (in accordance with the City's policy) toward achieving the Stated MWBE goal(s). As part of the good faith efforts assessment, the OBO Director may consider Consultant's failure to timely submit the notice or explanation required by this provision, and the OBO Director may impose sanctions or other penalties on Consultant for said failures in accordance with this section of this Agreement, Chapter 15 of the Code of Ordinances, OBO's policies and procedures, and the City's good faith efforts policy.
- 3.13.3. The OBO Director, in consultation with the Director, may review, at any time during the Term of this Agreement, Consultant's progress toward attainment of the Stated MWBE Goal(s), by reviewing the percentage of work to MWBE subcontractors and the payments Consultant has made to such MWBE subcontractors. If the OBO Director determines that Consultant is not in compliance with this section of this Agreement, Chapter 15 of the Code of Ordinances, OBO's policies and procedures, and the City's good faith efforts policy, the OBO Director may:
  - 3.13.3.1. After consultation with the Director and the Chief Procurement Officer, determine whether any of the following actions should be taken and notify Consultant of such determination:
    - 3.13.3.1.1. Enter a written agreement with Consultant allowing Consultant to cure the noncompliance matter;
    - 3.13.3.1.2. Suspend Consultant from engaging in any agreement with the City for a period up to, but not to exceed, five years, pursuant to Section 15-88 of the City's Code of Ordinances, as may be amended from time to time; or
    - 3.13.3.1.3. Take any other appropriate remedy.
  - 3.13.3.2. Make a recommendation to the Director and the Chief Procurement Officer, to:
    - 3.13.3.2.1. Withhold payment or reimbursement under this Agreement;
    - 3.13.3.2.2. Make a finding that Consultant is in default or has breached this Agreement;
    - 3.13.3.2.3. Determine not to renew this Agreement;

- 3.13.3.2.4. Terminate for cause this Agreement; or
- 3.13.3.2.5. Take any other appropriate remedy.

3.13.4. Consultant shall maintain records showing;

- 3.13.4.1. Subcontracts and supply agreements with Minority Business Enterprises;
- 3.13.4.2. Subcontracts and supply agreements with Women Business Enterprises;
- 3.13.4.3. Subcontracts and supply agreements with Small Business Enterprises (if any);
- 3.13.4.4. Written confirmation from MWBE subcontractors and suppliers that they are participants on the agreement; and
- 3.13.4.5. Specific efforts to identify and award subcontracts and supply agreements to MWBEs. Consultant shall submit periodic reports of its efforts under this Section to the OBO Director in the form and at the times he or she prescribes.

3.13.5. Consultant shall ensure that all subcontracts with MWBE subcontractors and suppliers contain the following terms:

- 3.13.5.1. [Name of MWBE subcontractor] shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.
- 3.13.5.2. Within five (5) business days of execution of this subcontract, Consultant [prime contractor] and Subcontractor shall designate, in writing, to the City of Houston's OBO Director ("the OBO Director") an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street, mailing address, phone number, and email address of such agent.
- 3.13.5.3. After reasonable attempt(s) to resolve disputes between the parties involving the terms, covenants, or conditions of this subcontract, a request for dispute resolution may be submitted to the Director. The Director may prescribe procedures to provide dispute resolution services in accordance with the requirements of Chapter 15 of the Houston City Code of ordinances.

#### **3.14. DRUG ABUSE DETECTION AND DETERRENCE**

3.14.1. It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. Consultant shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.

- 3.14.2. Before the City signs this Agreement, Consultant shall file with the Agreement Compliance Officer for Drug Testing ("CCODT"):
  - 3.14.2.1. A copy of its drug-free workplace policy;
  - 3.14.2.2. The Drug Policy Compliance Agreement substantially in the form set forth in Exhibit B; and
  - 3.14.2.3. A written designation of all safety impact positions or, if applicable, a Certification of No Safety Impact Positions, substantially in the form set forth in Exhibit C.
- 3.14.3. If Consultant files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six months during the performance of this Agreement or on completion of this Agreement if performance is less than six months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit D. Consultant shall submit the Drug Policy Compliance Declaration to the CCODT within 30 days of the expiration of each six-month period of performance and within 30 days of completion of this Agreement. The first six-month period begins to run on the date the City issues its Notice to Proceed or if no Notice to Proceed is issued, on the first day Consultant begins work under this Agreement.
- 3.14.4. Consultant also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Consultant's employee work force.
- 3.14.5. Consultant shall require that its subcontractors comply with the Executive Order, and Consultant shall secure and maintain the required documents for City inspection.

### **3.15. CONFIDENTIALITY**

- 3.15.1. Consultant and each of its Consultants shall keep all Documents and City work products or data it receives in strict confidence. Consultant shall not divulge such records or the information contained therein except as approved in writing by the Director or as otherwise required by law.

### **3.16. LICENSES AND PERMITS**

- 3.16.1. Consultant shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation. Consultant shall immediately notify the Director of any suspension, revocation, or other detrimental action against his or her license.

### **3.17. PAY OR PLAY**

- 3.17.1. The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, as revised from time to time, are incorporated into this Agreement for all purposes. Consultant has reviewed Executive Order No. 1-7 and shall comply with its terms and conditions.

**3.18. COMPLIANCE WITH CERTAIN STATE LAW REQUIREMENTS.**

- 3.18.1. Anti-Boycott of Israel. Consultant certifies that Consultant is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.
- 3.18.2. Anti-Boycott of Energy Companies. Consultant certifies that Consultant is not currently engaged in and agrees for the duration of this Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.
- 3.18.3. Anti-Boycott of Firearm Entities or Firearm Trade Associations. Consultant certifies that Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.
- 3.18.4. Certification of No Business with Foreign Terrorist Organizations. For purposes of Section 2252.152 of the Texas Government Code, Consultant certifies that, at the time of this Agreement neither Consultant nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of Consultant, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Texas Government Code as a company known to have contracts with or provide supplies to a foreign terrorist organization.

**3.19. ZERO TOLERANCE POLICY FOR HUMAN TRAFFICKING AND RELATED ACTIVITIES**

- 3.19.1. The requirements and terms of the City of Houston's Zero Tolerance Policy for Human Trafficking and Related Activities, as set forth in Executive Order 1-56, as revised from time to time, are incorporated into this Agreement for all purposes. Consultant has reviewed Executive Order 1-56, as revised, and shall comply with its terms and conditions as they are set out at the time of this Agreement's effective date. Consultant shall notify the City's Chief Procurement Officer, City Attorney, and the Director of any information regarding possible violation by the Consultant or its subcontractors providing services or goods under this Agreement within 7 days of Consultant becoming aware of or having a reasonable belief that such violations may have occurred, have occurred, or are reasonably likely to occur.

**3.20. PRESERVATION OF CONTRACTING INFORMATION.**

- 3.20.1. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and the Consultant agrees that this Agreement can be terminated if the Consultant knowingly or intentionally fails to comply with a requirement of that subchapter. If the requirements of Subchapter J, Chapter 552, Texas Government Code, apply to this Agreement, then for the duration of this Agreement (including the initial term, any renewal terms, and any extensions), Consultant shall preserve all contracting Information, as defined by Section 552.003 of the Texas Government Code, related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy, which record retention requirements include but are not limited to those set forth in Chapters 201 and 205 of the Texas Local Government Code and Texas Administrative Code Title 13, Chapter 7. Within five business days after receiving a request from the Director, Consultant shall provide any contracting Information

related to this Agreement that is in the custody or possession of Consultant. Upon the expiration or termination of this Agreement, Consultant shall, at the Director's election, either (a) provide, at no cost to the City, all contracting Information related to this Agreement that is in the custody or possession of Consultant, or (b) preserve the contracting Information related to this Agreement as provided by the records retention requirements applicable to the City pursuant to federal or state law or regulation, city ordinance or city policy.

3.20.2. If Consultant fails to comply with any one or more of the requirements of this Section, Preservation of contracting Information, or Subchapter J, Chapter 552, Texas Government Code, then, in accordance with and pursuant to the processes and procedures set forth in Sections 552.373 and 552.374 of the Texas Government Code, the Director shall provide notice to the Consultant and may terminate this Agreement. To effect final termination, the Director must notify Consultant in writing with a copy of the notice to the CPO. After receiving the notice, Consultant shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

#### **4. THE CITY'S RESPONSIBILITIES**

4.1 The City shall provide information regarding requirements for a Project including a written descriptive document, which shall set forth in detail the City's conditions and requirements for objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expendability, special equipment, and other conditions or requirements appropriate to the nature of a Project.

4.2 The City shall establish and update, when necessitated by changes in the agreed estimate and overall budget for a Project which shall include contingencies for bidding, changes in the work during construction, and other costs which are the responsibility of the City, including those described in this Article 4 and in Section 5.1.2.

4.3 The Director shall designate a representative authorized to act on the City's behalf with respect to a Project. The Director's authorized representative shall examine the Phase I and Phase II documents submitted by the Consultant and shall render and obtain decisions pertaining thereto promptly to avoid unreasonable delay in the Consultant's services.

4.4 If required for a Project, the City shall furnish or shall authorize the cost of obtaining as an Additional Service, a complete and correct written legal description of the site, including metes and bounds, corners, lines of streets and alleys, and location of the site.

4.5 The City shall pay for quality control testing and other laboratory tests, inspections and reports as required by law or by the Contract Documents.

4.6 When required for a Project, and when the services, information, surveys and reports described in Sections 4.4 and 4.5 inclusive, are furnished by the City, the Consultant shall be able to rely upon the accuracy and completeness thereof.

4.7 If the City observes or otherwise becomes aware of any fault or defect in a Project or nonconformance with the Contract Documents, prompt written notice thereof shall be given by the City to both the Consultant and Construction Contractor.

4.8 The City shall furnish required information and services and shall render or obtain approvals and decisions as expeditiously as necessary for the orderly progress of the Consultant's services and of the work.

## 5. CONSTRUCTION COST

### 5.1. DEFINITION

5.1.1. The Construction Cost shall be the actual cost to the City of all elements of a Project designed or specified by the Consultant.

5.1.2. Estimates of Construction Cost shall include (1) the cost, at current market rates, of labor and materials furnished by the City, (2) equipment designed, specified, selected or specially provided for by the Consultant, (3) City building permit fees, and (4) a reasonable allowance for the cost of construction, including the Construction Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding.

5.1.3. Construction Cost does not include the compensation of the Consultant and the Consultant's subcontractors, the cost of the land, rights-of-way, or other costs which are the responsibility of the City as provided in Article 4.

### 5.2. RESPONSIBILITY FOR CONSTRUCTION COST

5.2.1. Evaluations of the City's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Costs, if any, prepared by the Consultant, represent the Consultant's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Consultant nor the City has control over the cost of labor, materials or equipment, over the Construction Contractor's methods of determining bid prices, or over competitive bidding or market conditions. Accordingly, the Consultant cannot and does not warrant or represent that bids will not vary from a Project budget proposed, established or approved by the City, if any, or from any estimates of Construction Cost or evaluation prepared by the Consultant.

5.2.2. When a Maximum Total Construction Cost is established as a condition of this Agreement in Task Order(s) or at any time prior to the taking of bids, the Consultant shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, and, with written approval, to make reasonable adjustments in the scope of a Project, or to include in the Contract Documents alternate bids to adjust the Construction Cost to the specified Maximum Total Construction Cost.

5.2.3. If bidding has not commenced within 6 months after the Consultant submits the Contract Documents to the City, any Project budget or Maximum Total Construction Cost may, when warranted in the opinion of the Director, be adjusted to reflect any change in the general levels of prices in the construction industry between the date of submittal of the Contract Documents to the City and the date on which bid proposals are sought.

5.2.4. If a Project budget or Maximum Total Construction Cost (adjusted as provided in Section 5.2.3) is exceeded by the lowest bona fide bid, the City shall (1) give written approval of an increase in such Maximum Total Construction Cost, or (2) authorize rebidding of a Project

within a reasonable time, or (3) in the event a Project is abandoned, suspended in accordance with Section 7.4, cooperate in revising a Project scope and quality as required to reduce the Construction Cost. In the case of (4), provided a Maximum Total Construction Cost has been established as a condition of this Agreement, the Consultant, without additional charge, shall modify the Contract Documents as necessary to comply with the Maximum Total Construction Cost. The successful provision of such service shall be the limit of the Consultant's responsibility arising from the establishment of such Maximum Total Construction Cost, and having done so, the Consultant shall be entitled to compensation for all services performed, in accordance with this Agreement, whether or not Phase III: Construction Services are commenced.

## **6. PAYMENTS TO THE CONSULTANT**

### **6.1. GENERAL**

- 6.1.1. The City shall compensate the Consultant under this Agreement as provided in this Article.
- 6.1.2. The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Consultant's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificates and federal tax identification number to Consultant if requested.

### **6.2. PAYMENTS FOR BASIC SERVICES**

- 6.2.1. Payments for Basic Services shall be made as set forth in Section 6.6.
- 6.2.2. If the time initially established in the construction contract for completion of a Project is extended, through no fault of the Consultant, for more than 90 calendar days, the Consultant may request compensation for any required extension of Phase III services, which, if authorized, shall be paid in accordance with the provisions of Section 6.7 for Additional Services.
- 6.2.3. Payments for Basic Services may be made monthly upon presentation of the Consultant's statement of services rendered and expenses incurred.

### **6.3. PAYMENTS FOR ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES**

- 6.3.1. Payments for Additional Services and for Reimbursable Expenses may be made monthly upon presentation of the Consultant's statement of services rendered or expenses incurred.

### **6.4. PAYMENTS WITHHELD**

- 6.4.1. No deductions shall be made from the Consultant's compensation on account of penalty, liquidated damages or other sums withheld from payments to the Consultant.
- 6.4.2. If the Consultant receives payment from the City for work performed by any subcontractor or for materials provided by any supplier and the Consultant withholds or has withheld payment to the subcontractor or supplier on account of a deficiency in the quality or quantity of that subcontractor's or supplier's work or materials, the City may withhold the amount associated with such work or materials from any pending or future payments to the Consultant until the

next regular payment to the Consultant occurring after the City receives reasonable documentation that the deficiency has been remedied.

#### **6.5. PROJECT SUSPENSION**

- 6.5.1. If a Project is suspended for more than 365 days, the Consultant shall be compensated in accordance with this Article, for all services performed prior to the suspension.

#### **6.6. COMPENSATION FOR BASIC SERVICES**

- 6.6.1. For Basic Services of the Consultant, as described in Sections 3.1, 3.2, 3.3, 3.4, and 3.5, compensation to the Consultant shall be a lump sum amount agreed upon by the Consultant and the Director that will be recorded in each Task Order. The Director may negotiate a lump sum fee for each Task Order equal to or less than the following:

- 6.6.1.1. Billable rates, for each necessary personnel classification set out in Exhibit A times the necessary hours to complete the Task Order.

#### **6.7. COMPENSATION FOR ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES**

- 6.7.1. For Additional Services, as described in Section 3.6.1, compensation to the Consultant shall be paid in accordance with the billable rates in Exhibit A times the necessary hours to complete the Task Order plus approved Reimbursable Expenses
- 6.7.2. For Reimbursable Expenses, as described in the definitions, compensation to the Consultant shall be the amounts expended by the Consultant, the Consultant's employees and/or subcontractors in the interest of the Project.

#### **6.8. LIMIT OF APPROPRIATION**

- 6.8.1. The City's duty to pay money to Consultant under the Agreement is limited in its entirety by the provisions of this Section.
- 6.8.2. In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated \$ \_\_\_\_\_ ("Original Allocation") to pay money due under the Agreement. The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for the Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:
  - 6.8.3. The City makes a Supplemental Allocation by issuing to Consultant a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

## **NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"**

By signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This Supplemental Allocation has been charged to such appropriation.

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- 6.8.4. The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under the Agreement in excess of the Allocated Funds. Consultant must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Consultant's only remedy is suspension or termination of its performance under the Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.
- 6.8.5. The Director shall have the authority to reallocate funding between and among the various categories of Additional Services and the various categories of Reimbursable Expenses.

## **6.9. ADDITIONAL PROVISIONS**

- 6.9.1. All invoices for the Basic Services are subject to approval by the Director and are due and payable on or about thirty days after receipt and approval by the Director. The City agrees that it will not unreasonably delay or withhold payment or approval of any invoice; however, the Director shall approve in whole or in part or disapprove Consultant's invoices within fifteen days. Neither partial payments made hereunder nor approval of invoices or services by the Director shall be construed as final acceptance or approval of that part of the Consultant's services to which such partial payment or approval relates nor shall such payments be construed as relieving the Consultant of any of its obligations hereunder with respect thereto.

## **7. AGREEMENT TERM AND TERMINATION**

### **7.1. AGREEMENT TERM**

- 7.1.1. This Agreement is effective on the Countersignature Date and remains in effect for three years ("Primary Term") unless terminated sooner.
- 7.1.2. *Renewal Terms.* Upon expiration of the Primary Term, this Agreement will be automatically renewed for up to two additional successive one-year terms on the same terms and conditions as the Primary Term, unless the Director, at his or her sole discretion, notifies Consultant in writing of non-renewal at least thirty days before the expiration of the Primary Term or current Renewal Term.
- 7.1.3. The Director may issue a Task Order at any time during the Initial Term of this Agreement and subsequent renewals or extensions to it. After expiration or termination of this Agreement, no additional Task Orders may be issued, however, for any Task Order issued

prior to the expiration or termination of this Agreement, Consultant shall complete the work or services under the Task Order and this Agreement shall likewise remain in effect only for those purposes necessary and appropriate for the Task Order to continue until its own expiration or termination, unless Consultant is otherwise notified in writing by the Director.

## **7.2. TERMINATION BY THE CITY FOR CONVENIENCE**

- 7.2.1. The Director may terminate Consultant's performance under this Agreement at any time by giving seven days written notice to Consultant. As soon as possible, but not later than the effective date of such notice, Consultant shall, unless the notice directs otherwise, immediately discontinue all services in connection with this Agreement and shall proceed to promptly cancel all existing orders and Consultant subcontracts insofar as such orders or subcontracts are chargeable to this Agreement. Within seven days after the effective date of notice of termination, Consultant shall deliver copies of all Documents to the Director and submit an invoice showing in detail services performed under this Agreement to the date of termination. The City shall then pay the prescribed fees to Consultant for services actually performed under this Agreement up to the date of termination less such payment on account of charges previously made, in the same manner as prescribed in Article 8 of this Agreement. Any installments or lump sum fees shall be prorated in accordance with the progress of the Work at the effective date of termination. Consultant may, if necessary, submit invoices for vendor and Consultant charges reasonably necessary for a Project which are incurred prior to the effective date of termination and received by Consultant after its initial termination invoice.
- 7.2.2. Consultant understands and acknowledges that if the City determines not to proceed with this Agreement, according to the terms of this article, the Director shall provide Consultant with a written notice of his intent to terminate this Agreement, and this Agreement shall terminate upon Consultant's receipt of such written notice.

## **7.3. TERMINATION BY THE CITY FOR CAUSE**

- 7.3.1. City may terminate this Agreement in the event of a material default by Consultant and a failure by Consultant to cure such default after receiving notice thereof, as provided in this Section. Default by Consultant shall occur if Consultant fails to observe or perform any of its duties under this Agreement, if Consultant dies (if an individual), or for some other reason is unable to render services hereunder. Should such a default occur, the Director will deliver a written notice to Consultant describing such default and the proposed date of termination. Such date may not be sooner than the seventh day following receipt of the notice. The Director, at his or her sole option, may extend the proposed date of termination to a later date. If Consultant cures such default to the Director's reasonable satisfaction prior to the proposed date of termination, then the proposed termination shall be ineffective. If Consultant fails to cure such default prior to the proposed date of termination, then City may terminate its performance under this Agreement as of such date, and Consultant shall deliver all Documents to the Director within seven days of the effective date of the termination. If the City's cost of obtaining completion of the work by other consultants, in combination with other direct costs sustained by the City as a result of the default, exceeds the remaining contract amounts unpaid to Consultant, the City shall not be obligated to make any further payment to Consultant. This provision does not relieve Consultant of any other obligation Consultant may have to the City.

#### **7.4. SUSPENSION OF PERFORMANCE**

7.4.1. The Director may suspend Consultant's performance under this Agreement, with or without cause, by notifying Consultant in writing. Consultant shall resume work when directed to do so by the Director. The parties may negotiate and mutually agree in writing to a plan to reduce Consultant's stand-by costs during the suspension period. The City shall not grant any compensation or extension of time under this Section if the suspension results from non-compliance of Consultant or its subcontractors with any requirement of this Agreement.

#### **7.5. TERMINATION BY CONSULTANT FOR CAUSE**

7.5.1. Consultant may terminate its performance only upon default of the City. Should such default occur, Consultant shall have the right to terminate all or part of its duties under this Agreement as of the 14th day following the receipt by the City of a notice from Consultant describing such default and intended termination, provided: (1) such termination shall be ineffective if within the 14 day period the City cures the default; and (2) such termination may be stayed beyond such 14 day period, at the sole option of Consultant, pending cure of the default.

### **8. MISCELLANEOUS**

#### **8.1. GOVERNING LAWS**

8.1.1. This Agreement shall be construed and interpreted in accordance with the applicable laws of the State of Texas and City of Houston. Venue for any disputes relating in any way to this Agreement shall lie exclusively in Harris County, Texas.

#### **8.2. SUCCESSORS AND ASSIGNS**

8.2.1. This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in Section 8.11. This Agreement does not create any personal liability on the part of any officer or agent of the City.

#### **8.3. NON-WAIVER**

8.3.1. If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

8.3.2. An approval by the Director, or by any other employee or agent of the City, of any part of Consultant's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

#### **8.4. NOTICES**

8.4.1. All notices to either party to the Agreement must be in writing and must be delivered by hand, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section 1.1 of this Agreement or other address the receiving party has designated previously

by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

#### **8.5. CAPTIONS**

8.5.1. Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

#### **8.6. ACCEPTANCES AND APPROVALS**

8.6.1. Any acceptance or approval by the City, or its agents or employees shall not constitute nor be deemed to be a release of the responsibility and liability of Consultant, its employees, agents, Consultants, or suppliers for the accuracy, competency, and completeness for any Documents prepared or services performed pursuant to the terms and conditions of this Agreement, nor shall acceptance or approval be deemed to be an assumption of such responsibility or liability by the City, or its agents and employees, for any defect, error or omission in any Documents prepared or services performed by Consultant, its employees, agents, Consultants or suppliers pursuant to this Agreement.

#### **8.7. AMBIGUITIES**

8.7.1. If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

#### **8.8. INDEPENDENT CONTRACTOR**

8.8.1. The relationship of the Consultant to the City shall be that of an independent contractor. The City has no control or supervisory powers over the manner or method of Consultant's performance under this Agreement. All personnel Consultant uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Consultant is solely responsible for the compensation of its personnel, including but not limited to the withholding of income, social security, and other payroll taxes and all worker's compensation benefits coverage.

#### **8.9. SURVIVAL**

8.9.1. Consultant shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, Section 3.9 –Indemnification and Section 3.10 – Ownership and Use of Documents.

#### **8.10. ENFORCEMENT**

8.10.1. The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Consultant shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Consultant's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

## **8.11. BUSINESS STRUCTURE AND ASSIGNMENTS**

8.11.1. Consultant shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in '9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Consultant shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee. Consultant shall not delegate any portion of its performance under this Agreement without the Director's prior written consent.

## **8.12. LANDSCAPE ARCHITECTURAL CONSULTANT'S DEBT**

8.12.1. If Consultant, at any time during the term of this Agreement, incurs a debt, as the word is defined in Section 15-122 of the Houston City Code of Ordinances, it shall immediately notify City Controller in writing. If City Controller becomes aware that Consultant has incurred a debt, it shall immediately notify Consultant in writing. If Consultant does not pay the debt within thirty days of either such notification, City Controller may deduct funds in an amount equal to the debt from any payments owed to Consultant under this Agreement, and Consultant waives any recourse therefore. Consultant shall file a new Affidavit of Ownership, using the form designated by City, between February 1 and March 1 of every year during the term of this Agreement.

## **8.13. LANDSCAPE ARCHITECTURAL CONSULTANT'S ACCOUNTING RECORDS, INSPECTIONS AND AUDITS**

8.13.1. The Director and City Controller shall have the right to examine and review the Consultant's books, records and billing Documents which are directly related to performance or payment under this Agreement. The Consultant shall maintain such books, records, and billing Documents for four years after the cessation of Consultant's other services and responsibilities under this Agreement. Nothing in this Article shall affect the time for bringing a cause of action nor the applicable statute of limitations.

8.13.1.1. For contracts that are Federally funded, the following additional records requirements apply. Consultant agrees to provide the City, the appropriate Federal Agency administrator, the appropriate State agency, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Consultant shall keep its books, documents, papers, and records available for this purpose for at least five years after this Agreement terminates or expires. This provision does not limit the applicable statute of limitations.

8.13.1.2. Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

8.13.1.3. Consultant agrees to provide the appropriate Federal Agency administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement, if applicable.

8.13.1.4. In compliance with the Disaster Recovery Act of 2018, the City and Consultant acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

#### **8.14. ENTIRE AGREEMENT**

8.14.1. This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire Agreement of the Parties. No other Contracts, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

#### **8.15. WRITTEN AMENDMENT**

8.15.1. Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Consultant. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

#### **8.16. RISK OF LOSS**

8.16.1. Unless otherwise specified elsewhere in this Agreement, risk of loss or damage for each product passes from Consultant to the City upon Acceptance by the City.

#### **8.17. PARTIES IN INTEREST**

8.17.1. This Agreement does not bestow any rights upon any third party but binds and benefits the City and Consultant only.

#### **8.18. REMEDIES CUMULATIVE**

8.18.1. Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive but are cumulative of all rights and remedies which exist now or in the future. Neither Party may terminate its duties under this Agreement except in accordance with its provisions.

#### **8.19. FORCE MAJEURE**

8.19.1. Timely performance by both parties is essential to this Agreement. However, neither party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Consultant. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a party's obligations to complete performance under this Agreement. Force Majeure means fires, interruption of utility services, epidemics in the City, floods, hurricanes, tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Consultant, riots, court orders, and the acts of superior governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Consultant to extra Reimbursable Expenses or payment.

- 8.19.2. This relief is not applicable unless the affected party does the following:
  - 8.19.2.1. uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
  - 8.19.2.2. provides the other party with prompt written notice of the cause and its anticipated effect.
- 8.19.3. The Director will review claims that a Force Majeure that directly impacts the City or Consultant has occurred and render a written decision within 14 days. The decision of the Director is final. If Consultant disagrees with the Director's decision, then the Consultant is permitted to pursue any alleged breach of this Agreement in accordance with its remedies available at law.
- 8.19.4. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.
- 8.19.5. If the Force Majeure continues for more than 30 days from the date performance is affected, the Director may terminate this Agreement by giving 7 days' written notice to Consultant. This termination is not a default or breach of this Agreement. CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT

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**EXHIBIT A – BILLABLE RATES**

The following table represents the classifications and billable rates of personnel that the Consultant and subcontractor(s) anticipates will be directly engaged on the Project. The Director is authorized to approve additional classifications and billable rates for the Consultant's personnel and any subcontractor's personnel for unforeseen additional services.

<b><u>CLASSIFICATION</u></b>	<b><u>BILLABLE RATES</u></b>

## EXHIBIT B- DRUG POLICY COMPLIANCE AGREEMENT

I, \_\_\_\_\_,

(Name)

(Title)

of \_\_\_\_\_  
(Consultant)

have authority to bind Consultant with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Consultant is aware of and by the time the Agreement is authorized and approved by the City Council, City of Houston, Consultant will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a Notice to Proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Consultant that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Consultant s (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and an HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Consultant that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the Agreement with the City of Houston,

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the Agreement with the City and may result in the Agreement not being authorized and approved by the City Council, City of Houston or termination of the Agreement by the City of Houston.

---

(Date)

---

Consultant

---

Signature

---

Title

**EXHIBIT C- CERTIFICATION OF NO SAFETY IMPACT POSITIONS**

**THE STATE OF TEXAS**

§  
§  
§

**KNOW ALL MEN BY THESE PRESENTS:**

**THE COUNTY OF HARRIS**

**BEFORE ME**, the undersigned authority, on this day personally appeared

\_\_\_\_\_  
(Affiant)

who being by me duly sworn on his oath stated that he is \_\_\_\_\_

\_\_\_\_\_  
(Title)

of \_\_\_\_\_

\_\_\_\_\_  
(Consultant)

and that no employee safety impact positions, as defined in §5.17 of Executive Order No. 1-31, will be involved in performing the consulting services as provided in the Agreement. Consultant agrees and covenants that it shall immediately notify the City of Houston Director of Personnel if any safety impact positions are established to provide services in performing this City Agreement.

\_\_\_\_\_  
(Affiant's Signature)

SWORN AND SUBSCRIBED before me by \_\_\_\_\_  
\_\_\_\_\_  
(Affiant)

on \_\_\_\_\_.  
\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Notary Public in and for the State of TEXAS

\_\_\_\_\_  
(Print or type Notary Public name)

## EXHIBIT D - DRUG POLICY COMPLIANCE DECLARATION

**BEFORE ME**, the undersigned authority, on this day personally appeared

(Affiant)

who being by me duly sworn on his oath stated that he is \_\_\_\_\_

(Title)

of \_\_\_\_\_

(Consultant)

the Consultant named and referred to within the Agreement; that Affiant is fully competent and authorized to give this affidavit and that Affiant has personal knowledge and full authority to make the following declarations: This reporting period covers the preceding 6 months from \_\_\_\_\_ to \_\_\_\_\_, 20\_\_\_\_

Initials	A written Drug Free Workplace Policy has been implemented and employees notified. The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy)
Initials	Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures
Initials	Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines
Initials	Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of employees in safety impact positions during this reporting period is _____.
Initials	From _____ to _____ the following testing has occurred: (Start date) (End date)

	Reasonable	Post	
	<u>Random</u>	<u>Suspicion</u>	<u>Accident</u>
<u>Total</u>	_____	_____	_____
Number Employees Tested	_____	_____	_____
Number Employees Positive	_____	_____	_____
Percent Employees Positive	_____	_____	_____

Initials Any employee who tested positive was immediately removed from the City worksite consistent with the Mayor's Policy and Executive Order No. 1-31.  
I affirm that falsification or failure to submit this declaration timely in accordance with established guidelines will be considered a breach of contract.  
I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

(Affiant's Signature)

SWORN AND SUBSCRIBED before me by \_\_\_\_\_ on \_\_\_\_\_.  
(Affiant) (Date)

---

Notary Public in and for the State of **TEXAS**

---

(Print or type name)  
My Commission Expires: \_\_\_\_\_

## EXHIBIT E - SUBCONTRACTOR'S ASSIGNMENT OF COPYRIGHT

1. Consultant has entered into an Agreement with the CITY OF HOUSTON, TEXAS ("City") to provide professional landscape architectural consultant services as well as related support and consulting services ("Services").
2. Subcontractor is or will be providing services for Consultant related to its Agreement with the City.
3. In the course of Subcontractor's work for Consultant related to the provision of Services to the City, Contract Documents and other work products will be produced by Subcontractor for the benefit of the City for which Subcontractor will be compensated by Consultant.
4. Contract Documents include but are not limited to reports, charts, analyses, maps, letters, tabulations, computer programs, exhibits, notes, models, photographs, the original transparencies of all drawings, all graphic and written information prepared or assembled by Subcontractor and all other work products obtained or prepared by Subcontractor as part of its services for Consultant.
5. For and in consideration of the foregoing, the Subcontractor shall grant and assign and hereby does grant and assign to the City all right, title, interest and full ownership worldwide in and to any work, invention and all Contract Documents, or any modifications or improvements to them, and the copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights therein, that are discovered, conceived, developed, written or produced by the Subcontractor, its agents and employees pursuant to its contract with Consultant (collectively "Works"), to have and to hold the same unto the City absolutely.
6. The Subcontractor agrees that neither it nor any of its agents and employees shall have any right to assert or establish a claim or exercise any of the rights embodied in any copyrights, patents, trademarks, trade secrets and any other possessory or proprietary rights related to the Works. If requested by the Consultant, the Subcontractor shall place a conspicuous notation upon any such Works which indicates that the copyright, patent, trademark or trade secret thereto is owned by the City of Houston.
7. The Subcontractor shall execute all documents required by the Consultant and the Director of the General Services Department of the City ("Director") to further evidence such assignment and ownership. The Subcontractor shall cooperate with the Consultant and the City in registering, creating or enforcing any copyrights, patents, trademarks, trade secrets or other possessory or proprietary rights arising hereunder. If any assistance by the Subcontractor is requested and rendered pursuant to this Section, the City shall reimburse the Subcontractor for all out-of-pocket expenses incurred by the Subcontractor in rendering such assistance, subject to the availability of funds. On termination of the Subcontractor's contract with Consultant or upon request by the Director, the Subcontractor shall deliver all Works to the City. The Subcontractor agrees that its agents and employees performing work hereunder are bound by the terms of this Exhibit.

IN WITNESS HEREOF, Subcontractor has executed this Assignment as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Subcontractor

By:  
Title:

## EXHIBIT F: FEDERAL PROVISIONS

Version 06/24/2024

### **GENERAL FEDERAL REQUIREMENTS APPLICABLE TO AGREEMENTS, ADDENDA, AND PURCHASE ORDERS INVOLVING FEDERAL FUNDS (“GENERAL FEDERAL REQUIREMENTS”)**

#### **1. General**

- 1.1. Contractor must comply with the following federal provisions, as applicable, as a condition of this City of Houston (“City”) Agreement. For purposes of this Exhibit, the following terms have the meanings set forth in this Exhibit.
  - “Agreement” means the Agreement, Addendum, or Purchase Order to which this **Exhibit** is attached.
  - “Contractor” means Contractor, subrecipient, or Vendor as defined in the Agreement to which this **Exhibit** is attached.
  - “Federal Agency” means any relevant federal agency overseeing or administering the funding set forth in the Agreement to which this **Exhibit** is attached as a source of funding.
- 1.2. Contractor also acknowledges that the City is using federal funds attached to a federal program (“Program”) for all or a portion of this Agreement. Contractor therefore shall, in addition to those set forth in this Exhibit, comply with any specific terms and conditions as set forth in Federal Agency guidance documents, FAQs, websites, or similar documents as required by the Director or CPO, and any specific terms and conditions set forth in the grant as specified by the Director or CPO (“Funding Law, Regulations and Guidelines”).
- 1.3. Contractor also shall provide for compliance with the federal laws, rules, regulations, interpretive guidance and other materials set forth in this Exhibit in any agreements it enters into with other parties relating to the federal funds.
- 1.4. Contractor acknowledges that federal financial assistance will be used to fund all or a portion of this Agreement. Contractor shall comply with all applicable federal law, regulations, executive orders, federal policies, procedures and directives as well as any guidance issued by Federal Agency relating to the Program and Funding Law, Regulations and Guidelines. Federal regulations applicable to this funding include but are not limited to the following:
  - 1.4.1. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
  - 1.4.2. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference
  - 1.4.3. Generally applicable federal environmental laws and regulations

- 1.5. Contractor acknowledges that the Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from this Agreement.
- 1.6. Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Contractor's actions pertaining to this Agreement. False statements or claims may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.
2. Use of Funds. Contractor understands and agrees that the funds disbursed under this funding may only be used for the Program and in compliance with the Program and the Funding Law, Regulations and Guidelines.
3. Award Amount. The amount of funding dedicated to this Agreement is limited to the amount set out in the attached Agreement, unless otherwise agreed to by the Parties, in writing.
4. Period of Performance. The Period of Performance of this Agreement will be on the countersignature date of the City Controller on the Agreement, or in the case of Purchase Orders on the date of issuance of the Purchase Order by the City, which must be after the Contractor signs this Exhibit, and conclude on or before the ending date of the grant, unless the grant is extended and the Parties mutually agree to an extension under the Agreement.
5. Contractor shall not use the Department of Homeland Security (DHS) or any Federal Government or Federal Agency seal(s), logos, crests, or reproductions of flags or likenesses of DHS or any Federal Government or Federal Agency officials without specific DHS or any Federal Government or Federal Agency pre-approval.
6. Access to Records. The following access to records requirements apply to this Agreement:
  - 6.1. Contractor agrees to provide the City, any Federal Agency Administrator, the Texas Department of Emergency Management, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Contractor shall keep its books, documents, papers, and records available for this purpose for at least seven years after this Agreement terminates or expires. This provision does not limit the applicable statute of limitations.
  - 6.2. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
  - 6.3. Contractor agrees to provide the Federal Agency or its authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement.
  - 6.4. In compliance with the Disaster Recovery Act of 2018, the City and Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the Federal Agency or its authorized representatives or the Comptroller General of the United States.
  - 6.5. Within ten days of written request by the City, Contractor agrees to provide the City all relevant documentation pertaining to the Program and this Agreement to confirm compliance with Federal

requirements, ensure the Program is achieving its purpose, and to respond to audits, as necessary.

7. Environmental Compliance – Applicable only to Agreements over \$150,000.

- 7.1. Contractor shall comply with all applicable standards, ordered, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251 et seq.).
- 7.2. Contractor shall report all violations to the City's Purchasing Agent/Chief Procurement Office or designee (CPO), and understands and agrees that the City, through its designated representative, will, in turn, report each violation as required to assure notification to the Federal Agency, and the appropriate Environmental Protection Agency Regional Office.
- 7.3. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

8. Contract Work Hours and Safety Standards Act – Applicable only to Agreements over \$100,000.

- 8.1. *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- 8.2. *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in subparagraph 8.1 of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 8.1 of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 8.1 of this section.
- 8.3. *Withholding for unpaid wages and liquidated damages.* The federal agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8.2 of this section.
- 8.4. *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph 8.1 through 8.4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible

for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 8.1 through 8.4 of this section.

9. **Equal Employment Opportunity.** During the performance of this Agreement, Contractor agrees as follows:

- 9.1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. "Contractor" will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
  - 9.1.1. Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 9.2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 9.3. Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- 9.4. Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 9.5. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 9.6. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 9.7. In the event of Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated,

or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- 9.8. Contractor will include the portion of the sentence immediately preceding paragraph 9.1 and the provisions of paragraphs 9.1 through 9.8 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the Federal Agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

- 9.9. The City further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.
- 9.10. The City agrees that it will assist and cooperate actively with the Federal Agency, and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the Federal Agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering Federal Agency in the discharge of the City or Federal Agency's primary responsibility for securing compliance.
- 9.11. The City further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the City agrees that if it fails or refuses to comply with these undertakings, the Federal Agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

10. Procurement of Recovered Materials.

- 10.1. In the performance of this Agreement, Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
  - 10.1.1. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
  - 10.1.2. Meeting Agreement performance requirements; or
  - 10.1.3. At a reasonable price.
- 10.2. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- 10.3. Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

## 11. Domestic Preference Requirements

### 11.1. *Domestic Preference Requirement – 2 C.F.R. §200.322*

- 11.1.1. As appropriate and to the extent consistent with law, Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this paragraph must be included in all subcontracts and purchase orders for work or products under this Agreement. For purposes of this paragraph:
  - 11.1.1.1. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  - 11.1.1.2. 2 “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

### 11.2. *Domestic Content Procurement Preference Requirement for Infrastructure Projects*

- 11.2.1. For all infrastructure projects funded by Federal financial assistance, except for certain projects funded by a federal agency that constitute pre- and post-disaster or emergency expenditures as defined in OMB Guidance M-22-11 or otherwise falls under a waiver approved by the Federal Agency, Contractor shall comply with the domestic content procurement preference requirement and purchase, acquire, or use products meeting the domestic content procurement preference requirement. For purposes of this paragraph:
  - 11.2.1.1. “Domestic Content Procurement Preference” means that (A) all iron and steel used in the project are produced in the United States; (B) the manufactured products used in the project are produced in the United

States; or (C) the construction materials used in the project are produced in the United States. The requirements of this paragraph must be included in all subcontracts and purchase orders for work or products under this Agreement.

11.2.1.2. “Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States— (A) roads, highways, and bridges; (B) public transportation; (C) dams, ports, harbors, and other maritime facilities; (D) intercity passenger and freight railroads; (E) freight and intermodal facilities; (F) airports; (G) water systems, including drinking water and wastewater systems; (H) electrical transmission facilities and systems; (I) utilities; (J) broadband infrastructure; and (K) buildings and real property.

11.2.1.3. “Produced in the United States” means—

- in the case of iron or steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- in the case of manufactured products, that— (i) the manufactured product was manufactured in the United States; and (ii) the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- in the case of construction materials, that all manufacturing processes for the construction material occurred in the United States.

11.2.1.4. “Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States. Projects consisting solely of the purchase, construction, or improvement of a private home for personal use would not constitute an infrastructure project under OMB Guidance M-22-11. Projects that will serve a public function, are publicly owned and operated, privately operated on behalf of the public, or are a place of public accommodation are indicia of infrastructure.

## 12. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

12.1. As used in this paragraph, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expenditure of FEMA Award Funds for Covered Telecommunications Equipment or Services.

### 12.2. Prohibitions

- 12.2.1. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after August 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
- 12.2.2. Unless an exception in this paragraph applies, Contractor and its Subcontractors shall not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Agency to:
  - 12.2.2.1. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
  - 12.2.2.2. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
  - 12.2.2.3. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
  - 12.2.2.4. Provide, as part of its performance of this Agreement, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

### 12.3. Exceptions

- 12.3.1. This paragraph does not prohibit contractors, such as Contractor, from providing—
  - 12.3.1.1. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
  - 12.3.1.2. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- 12.3.2. By necessary implication and regulation, the prohibitions also do not apply to:
  - 12.3.2.1. Covered telecommunications equipment or services that:
    - Are not used as a substantial or essential component of any system; and
    - Are not used as critical technology of any system.
  - 12.3.2.2. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

12.3.2.3. That which 2 C.F.R. Section 200.216 does not apply.

12.4. Reporting requirement

12.4.1. In the event Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during performance of the Services set forth in this Agreement, or Contractor is notified of such by a Subcontractor at any tier or by any other source, Contractor shall report the information in the manner stated below to the recipient or subrecipient, unless elsewhere in this Agreement are established procedures for reporting the information.

12.4.2. Contractor shall report the following information pursuant to paragraph 12.5:

12.4.2.1. Within one business day from the date of such identification or notification: The Contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

12.4.2.2. Within 10 business days of submitting the information above: Any further available information about mitigation actions undertaken or recommended. In addition, Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

12.5. Subcontracts. Contractor shall insert the substance of this clause, including this paragraph 12.5, in all subcontracts and other contractual instruments.

13. Remedies. If any work performed and/or goods delivered by Contractor fails to meet the requirements of the Agreement, any other applicable standards, codes or laws, or otherwise breaches the terms of the Agreement, the CPO may in his or her sole discretion:

- 13.1. elect to have Contractor re-perform or cause to be re-performed, at Contractor's sole expense, any of the work which failed to meet the requirements of the contract;
- 13.2. in the case of goods, reject the goods and require Contractor to provide replacement goods that meet the needs of the City and the terms of the Agreement;
- 13.3. hire another contractor to perform the work and deduct any additional costs incurred by the City as a result of substituting contractors from any amounts due to Contractor; or
- 13.4. pursue and obtain any and all other available legal or equitable remedies.

This Section shall in no way be interpreted to limit the City's right to pursue and obtain any and all other available legal or equitable remedies against Contractor.

14. Suspension and Debarment.

- 14.1. Federal regulations restrict the City from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, where the contract is funded in whole or in part with federal funds. Accordingly, a contract or subcontract must not be made with any parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration that contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under certain statutory or regulatory authority. Contractor can verify its status and the status of its principals, affiliates, and subcontractors at [www.SAM.gov](http://www.SAM.gov).
- 14.2. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000 and, if applicable, 45 C.F.R. § 75.213. As such, Contractor is required to verify that none of its principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- 14.3. Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and, if applicable, 45 C.F.R. § 75.213, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- 14.4. This certification, found in Attachment 1 of this Exhibit, is a material representation of fact relied upon by the State of Texas and the City. If it is later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and, if applicable, 45 C.F.R. § 75.213, in addition to remedies available to the State of Texas and the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- 14.5. Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and, if applicable, 45 C.F.R. § 75.213, while this offer is valid and throughout the period of this purchase order. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

15. Byrd Anti-Lobbying Amendment.

- 15.1. A contractor who applies or bids for an award or receives a Contract/Purchase Order of \$100,000 or more shall submit to the City's Chief Procurement Officer or designee the required certification as set out in Attachment 2 of this Exhibit. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

16. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.

- 16.1. If Contractor intends to subcontract any portion of the work covered by this Agreement, Contractor must take all necessary affirmative steps to assure that small and minority

businesses, women's business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

- 16.1.1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- 16.1.2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- 16.1.3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- 16.1.4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- 16.1.5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

17. Davis-Bacon Act – Applicable to Contracts/Purchase Orders for construction work in excess of \$2,000.00 and not funded by FEMA-PA Program.

- 17.1. All transactions regarding this Contract/Purchase Order shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- 17.2. Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- 17.3. Additionally, Contractor is required to pay wages not less than once a week.

18. Copeland "Anti-Kickback" Act – Applicable to Contracts/Purchase Orders for construction work in excess of \$2,000.00 and when the Davis-Bacon Act also applies.

- 18.1. *Contractor.* Contractor shall comply with 18 U.S.C. §874, 40 U.S.C. §3145 and the requirements of 29 C.F.R. part 3 as may be applicable, which are incorporated by reference to this Agreement.
- 18.2. *Subcontracts.* Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the City or the Federal Agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- 18.3. *Breach.* A breach of the contract clauses above may be grounds for termination of this Agreement, and for debarment as a contractor and subcontractor as provided in 29 U.S.C. § 5.12.

19. Changes. The Director may modify the scope of services or quantity and type of goods by giving written notification to Contractor, subject to the funds allocated by the City to this Agreement. The notice takes effect immediately upon receipt by Contractor.
20. Protections for Whistleblowers.
  - 20.1. In accordance with 41 U.S.C. § 4712, Contractor may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
  - 20.2. The list of persons and entities referenced in the paragraph above includes the following:
    - 20.2.1. A member of Congress or a representative of a committee of Congress;
    - 20.2.2. An Inspector General;
    - 20.2.3. The Government Accountability Office;
    - 20.2.4. A Treasury employee responsible for contract or grant oversight or management;
    - 20.2.5. An authorized official of the Department of Justice or other law enforcement agency;
    - 20.2.6. A court or grand jury; or
    - 20.2.7. A management official or other employee of recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
  - 20.3. Contractor shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.
21. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is encouraged to adopt and enforce on-the-job seat belt policies and programs for its employees when operating Contractor-owned, rented, or personally-owned vehicles.
22. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Contractor is encouraged to adopt and enforce policies that ban text messaging while driving.
23. Publications. Any publications produced with funds from this award must display the following language noting the funds for the project came from federal funds.

Any publications produced with funds from this award or pertaining to projects or programs administered with funds from this award must be approved by the City prior to publication.

24. Debts Owed to the City.
  - 24.1. Any funds paid to Contractor (1) in excess of the amount to which Contractor is finally determined to be authorized to retain under the terms of its award from Treasury; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by

Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by the Contractor shall constitute a debt to the City and to the Federal government.

- 24.2. Any debts determined to be owed the City must be paid promptly by Contractor for repayment to the federal government.
- 24.3. A debt is delinquent if it has not been paid by the date specified in the City's initial written demand for payment, unless other satisfactory arrangements have been made or if the Contractor knowingly or improperly retains funds that are a debt as defined in this paragraph. The City will take any actions available to it to collect such a debt.
25. **Disclaimer.** The United States expressly disclaims any and all responsibility or liability to Recipient and Contractor or third persons for the actions of Recipient, Contractor, or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award. The acceptance of this award by Recipient and Contractor does not in any way establish an agency relationship between the United States and Recipient or Contractor.
26. Contractor understands that the City's obligation for payment under this Agreement is limited in its entirety by the provisions of this Agreement for the performance of services under this Agreement; unless additional funds are approved by City Council through supplemental allocations to pay for the services, the City shall have no obligation to pay Contractor. Contractor must look to these designated funds only and to no other funds for the City's payment under this Agreement, and that the City is permanently excused from making payments due under this Agreement if, for whatever reason, there is a lack of funds.

#### **ADDITIONAL REQUIREMENTS IF AGREEMENT IS FUNDED BY AMERICAN RESCUE PLAN ACT FUNDS:**

In addition to the General Federal Requirements listed above, if this Agreement is funded using Coronavirus Local Fiscal Recovery Funds ("CLFRF Fund"), which were established by the American Rescue Plan Act of 2021, Contractor shall comply with all procurement requirements, laws, regulations, and interpretative guidance relating to the American Rescue Plan Act of 2021, including but not limited to the requirements listed below, and these requirements will flow down to any agreements Contractor enters into with other parties relating to these funds.

1. **Civil Rights Compliance.** Contractor shall not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 C.F.R. part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 C.F.R. part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 C.F.R. part 23. Contractor shall submit to the City's Chief Procurement Officer or designee the required assurances as set out in Attachment 3 of this Exhibit.

Contractor is deemed to have read and understands the requirements of each of the following, if applicable to the project under this Agreement:

- 1.1. Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d et seq.); 24 C.F.R. Part I, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development - Effectuation of Title VI of the Civil Rights Act of 1964";
- 1.2. Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e, et seq.);
- 1.3. Title VIII of the Civil Rights Act of 1968, "The Fair Housing Act of 1968" (42 U.S.C. § 3601, et seq.), as amended;
- 1.4. Executive Order 11063, as amended by Executive Order 12259, and 24 C.F.R. Part 107, "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063"; The failure or refusal of Contractor to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 C.F.R. 107.60;
- 1.5. The Age Discrimination Act of 1975 (42 U.S.C. § 6101, et seq.); and
- 1.6. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794.) and
- 1.7. "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development", 24 C.F.R. Part 8.
- 1.8. The Americans with Disabilities Act (42 U.S.C. §12131; 47 U.S.C. §§155, 201, 218, and 225);
- 1.9. By signing this Agreement, Contractor understands and agrees that the activities funded shall be performed in accordance with 24 C.F.R. Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. § 4151, et seq.), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system.

#### **ADDITIONAL REQUIREMENTS IF AGREEMENT IS FUNDED BY U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FUNDS:**

In addition to the General Federal Requirements listed above, if this Agreement is funded using funds from the U.S. Department of Housing and Urban Development ("HUD"), Contractor shall comply with all procurement requirements, laws, regulations, and interpretative guidance relating to the respective HUD program, including but not limited to program requirements found in 24 C.F.R. Part 570 (CDBG), 24 C.F.R. 92 (HOME), 24 C.F.R. Part 574 (HOPWA), 24 C.F.R. Part 576 (Emergency Solutions Grant) and the requirements listed below, and these requirements will flow down to any agreements Contractor enters into with other parties relating to these funds.

1. **Civil Rights Compliance.** Contractor shall not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 C.F.R. part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 C.F.R. part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 C.F.R. part 23. Contractor shall submit to the City's Chief Procurement Officer or designee the required assurances as set out in Attachment 3 of this Exhibit.

Contractor is deemed to have read and understands the requirements of each of the following, if applicable to the project under this Agreement:

- 1.1. title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d et seq.); 24 C.F.R. Part I, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development - Effectuation of Title VI of the Civil Rights Act of 1964";
- 1.2. Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e, et seq.);
- 1.3. Title VIII of the Civil Rights Act of 1968, "The Fair Housing Act of 1968" (42 U.S.C. § 3601, et seq.), as amended;
- 1.4. Executive Order 11063, as amended by Executive Order 12259, and 24 C.F.R. Part 107, "Nondiscrimination and Equal Opportunity in Housing under Executive Order 11063"; The failure or refusal of Contractor to comply with the requirements of Executive Order 11063 or 24 C.F.R. Part 107 shall be a proper basis for the imposition of sanctions specified in 24 C.F.R. 107.60;
- 1.5. The Age Discrimination Act of 1975 (42 U.S.C. § 6101, et seq.); and
- 1.6. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794.) and
- 1.7. "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development", 24 C.F.R. Part 8.
- 1.8. The Americans with Disabilities Act (42 U.S.C. §12131; 47 U.S.C. §§155, 201, 218, and 225);
- 1.9. By signing this Agreement, Contractor understands and agrees that the activities funded shall be performed in accordance with 24 C.F.R. Part 8; and the Architectural Barriers Act of 1968 (42 U.S.C. § 4151, et seq.), including the use of a telecommunications device for deaf persons (TDDs) or equally effective communication system

2. National Flood Insurance Program.

- 2.1. If applicable, this Agreement is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234) for areas identified by HUD as having special flood hazards. The use of any funds provided for acquisition or construction in identified areas shall be subject to the Mandatory Purchase of Flood Insurance requirements of section 102(a) of said act.
- 2.2. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared, or improved with assistance provided under this Agreement shall contain, if the land is located in an area identified by HUD as having a special flood hazard, provisions which obligate the transferee and its successors or assigns to obtain and maintain, during the life of the project, flood insurance as required under section 102(a) of the Flood Disaster Protection Act of 1973, as amended. These provisions shall be required notwithstanding the fact that the construction on the land is not itself funded with funds provided under this Agreement.

3. Displacement, Relocation, Acquisition and Replacement of Housing

- 3.1. Contractor understands that projects funded hereunder may be subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. §4601-4655),

as applicable; and that individuals or businesses that are required to move from real property, permanently or involuntarily as a direct result of rehabilitation, demolition, or acquisition for the project assisted hereunder must be compensated pursuant to the URA.

4. Section 3 of the Housing and Urban Development Act of 1968

- 4.1. Compliance with the provisions of Section 3 of the Housing and Urban Development Act of 1968, Pub. L. 90-448, 82 Stat. 476 (codified as amended at 12 U.S.C. 1701u) and as implemented by the regulations set forth in 24 CFR Part 75, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon any Contractors, subrecipient, and subcontractors. Failure to fulfill these requirements shall subject any Contractors, subrecipient, and subcontractors, their successors and assigns, to those sanctions specified by this Agreement through which Federal assistance is provided.
- 4.2. Contractors agree to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is subject to the requirements of Section 3 of the Department of Housing and Urban Development (HUD). Section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. §1701u, "Section 3") and implementing regulations at 24 C.F.R. Part 75 apply to the Agreement. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted developments covered by Section 3 shall, to the greatest extent feasible, be directed to low and very low-income persons, including persons who are recipients of HUD assistance for housing, with a preference for both targeted workers living in the service area or neighborhood of the Development and YouthBuild participants, as defined at 24 CFR Part 75 ("Section 3 Regulations")."

- 4.3. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 USC §1701u) ("Section 3"). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted developments covered by Section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, including persons who are recipients of HUD assistance for housing, with a preference for both targeted workers living in the service area or neighborhood of the Development and YouthBuild participants, as defined at 24 CFR Part 75 ("Section 3 Regulations").
- 4.4. Contractor agrees to comply with HUD's regulations in Section 3 Regulations, which implement Section 3. As evidenced by their execution of this Agreement, the Contractor certifies that they are under no contractual or other impediments that would prevent them from complying with the Section 3 Regulations.
- 4.5. Contractor shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause and shall post copies of the notice in conspicuous places at the worksite where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference and shall set forth the following: (i) minimum number and job titles subject to hire, (ii) availability of apprenticeship and training positions, (iii) qualifications

for each, (iv) name and location of the person(s) taking applications for each of the positions, and (v) the anticipated date the work shall begin.

- 4.6. Contractor will include or have included a Section 3 clause in every subcontract subject to compliance with regulations in Section 3 Regulations and agrees to take appropriate action, as provided in an applicable provision of the subcontractor in this Section 3 clause, upon a finding that the subcontractor violates the regulations in Section 3 Regulations. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in Section 3 Regulations.
- 4.7. The Contractor will certify that any vacant employment positions, including training positions, that are filled (i) after a contractor is selected but before the Agreements executed, and (ii) with persons other than those to whom the regulations of Section 3 Regulations require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under Section 3 Regulations
- 4.8. Noncompliance with HUD's regulations in Section 3 Regulations may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.

5. Lead-Based Paint Poisoning Prevention Act. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§ 4851-4856), and the implementing regulations at 24 C.F.R. Part 35, Subparts A, B, J, K and R may apply to activities under the Contract.

6. Conflict of Interest

- 6.1. In the procurement of supplies, equipment, construction, and services by the City or a subrecipient, the conflict of interest provisions in 2 C.F.R. Part 200, Subpart B - General Provisions, shall apply.
- 6.2. In all cases not governed by 2 C.F.R. Part 200, Subpart B, the provisions of this section shall apply. Such cases include, but may not be limited to, the acquisition and disposition of real property and the provision of assistance by the recipient, by its subrecipients, or to individuals, businesses or other private entities under eligible activities which authorize such assistance (e.g. rehabilitation, preservation, and other improvements of private properties or facilities).
  - 6.2.1. No persons described in paragraph 7.2.2 (below) who exercise or have exercised any functions or responsibilities with respect to federal activities or who are in a position to participate in a decision-making process or gain inside information with regard to federal assisted activities, may obtain a personal or financial interest or benefit from, or have any interest in any contract, subcontract, or agreement or the proceeds thereunder, either for themselves or those with whom they have family or business

ties, during their tenure or for one year thereafter with respect to the federal assisted activity, or with respect to the proceeds of the federal assisted activity.

6.2.2. The requirements of paragraph 7.2.1 apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, of any designated public agency, contractor, or subrecipient which receives funds under the federal grant.

7. Eligibility of Aliens Not Lawfully Present in U.S. Contractor understands that aliens not lawfully present in the U.S., as described in 49 C.F.R. §24.208, are not eligible to apply for benefits under certain federal activities.

8. Architectural Barriers Act. The Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 C.F.R. §40.2 or the definition of "building" as defined in 41 C.F.R. §101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157) and shall comply with the Uniform Federal Accessibility Standards (Appendix A to 24 C.F.R. Part 40 for residential structures, and Appendix A to 41 C.F.R. Part 101-19, Subpart 10119.6, for general type buildings).

9. Records for Audit Purposes. Without limitation to any other provision of the foregoing Agreement/Contract, Contractor shall maintain all records concerning the program or project financed under this Agreement which the City reasonably requires from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient pursuant to 2 C.F.R. §200.333. Contractor shall maintain records required by 24 C.F.R. §135.92 for the period required under 2 C.F.R. §200.333. Contractor will give the City, HUD, the Comptroller General of United States, the General Accounting Office, or any of their authorized representatives access to and the right to examine, copy, or reproduce all records pertaining to the acquisition and construction of the project and the operation of the program or project. The right to access shall continue as long as the records are required to be maintained under 2 C.F.R. §200.336.

10. Audit Requirements.

10.1. Limited Scope Audit - Contractor understands that Non-Federal entities that expend less than \$750,000 a year in Federal awards are exempt from Federal audit requirements for that year, but records must be available for review and audit as described hereinabove at Section 10. Contractor further understands that limited scope audits can and may be required by the City for non-Federal entities that expend less than \$750,000. If the City requires such limited scope audits, same shall be performed in accordance with 2 C.F.R. Part 200, Subpart F - Audit Requirements.

10.2. Single Audit - Single Audit - Contractor further understands that non-Federal entities that expend \$750,000 or more a year in Federal awards shall have a single audit conducted pursuant to 2 C.F.R. Part 200, Subpart F - Audit Requirements, except when an election is made to have a program specific audit pursuant to and described in 2 C.F.R. Part 200, Subpart F - Audit Requirements.

Requirements. Once the Agreement is executed, Contractor understands that it is barred from considering such audit and must have a single audit conducted as described hereinabove.

11. **Rights to Inventions made under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 C.F.R. §401.2 (a) and the recipient or contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or contractor must comply with the requirements of 37 C.F.R. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
12. **Energy Policy and Conservation Act.** Contractor must comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §6201).

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**EXHIBIT F, ATTACHMENT 1: DEBARMENT CERTIFICATION  
(CERTIFICATION REGARDING DEBARMENT SUSPENSION AND OTHER RESPONSIBILITY  
MATTERS - PRIMARY COVERED TRANSACTIONS)**

This Agreement is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 3000 (Non-procurement Debarment and Suspension) and, if applicable, 45 C.F.R. § 75.213. As such, Contractor is required to confirm that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

**INSTRUCTIONS FOR CERTIFICATION**

- 1) By signing this Agreement, Contractor, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.
- 2) The inability of a contractor to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate this transaction for cause or default. T
- 4) The prospective primary participant shall provide immediate written notice to the City if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in this certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- 6) The prospective primary participant agrees by signing the Agreement that it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction. If it is later determined that the prospective primary participant knowingly entered into such a transaction, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 7) The prospective primary participant further agrees by signing this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," as available through the United States Department of Homeland Security, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4,

debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

- 9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

### **CERTIFICATION**

1) The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded by any Federal department or agency;
- (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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Company Name

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Name and Title

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Signature

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Date

**EXHIBIT F, ATTACHMENT 2: BYRD ANTI-LOBBYING CERTIFICATION  
(CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS)**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Contractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31.U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

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Name of Contractor

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RFP, ITB, EPO or PO No., or Project Name

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Signature

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Printed Name

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Title

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Date

### **EXHIBIT F, ATTACHMENT 3: ASSURANCES**

#### **(ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS IF AGREEMENT IS FUNDED BY AMERICAN RESCUE PLAN ACT FUNDS OR U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FUNDS)**

As a condition of receipt of federal financial assistance from the Department of the Treasury, the Contractor named below (hereinafter referred to as the "Contractor") provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to the Contractor's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Recipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Contractor's program(s) and activity(ies), so long as any portion of the Recipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Contractor ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Contractor acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Contractor understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Contractor shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Contractor understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Contractor's programs, services, and activities.
3. Contractor agrees to consider the need for language services for LEP persons when Contractor develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>. Contractor acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Contractor and Contractor's successors, transferees, and assignees for the period in which such assistance is provided.
4. Contractor acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1 – 4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Contractor and the Contractor's sub-grantees, contractors, subcontractors, successors, transferees, and assignees:

The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42

U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

5. Contractor understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Contractor, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Contractor for the period during which it retains ownership or possession of the property.
6. Contractor shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Contractor shall comply with information requests, on-site compliance reviews and reporting requirements.
7. Contractor shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Contractor also must inform the Department of the Treasury if Contractor has received no complaints under Title VI.
8. Contractor must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Contractor and the administrative agency that made the finding. If the Contractor settles a case or matter alleging such discrimination, the Contractor must provide documentation of the settlement. If Contractor has not been the subject of any court or administrative agency finding of discrimination, please so state.
9. If the Contractor makes sub-awards to other agencies or other entities, the Contractor is responsible for ensuring that Contractors also comply with Title VI and other applicable authorities covered in this document. State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that they are effectively monitoring the civil rights compliance of sub-recipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

Under penalty of perjury, the undersigned official(s) certifies that official(s) has read and understood the Contractor's obligations as herein described, that any information submitted in conjunction with this assurances document is accurate and complete, and that the Contractor is in compliance with the aforementioned nondiscrimination requirements.

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Contractor

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Date

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Signature of Authorized Official

## Certificate Of Completion

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Status: Completed

Subject: Docusign: LA TOC - Addendum #2

Source Envelope:

Document Pages: 110

Signatures: 1

Envelope Originator:

Certificate Pages: 2

Initials: 1

Jessica Bacorn

AutoNav: Enabled

EnvelopeD Stamping: Enabled

Time Zone: (UTC-06:00) Central Time (US & Canada)

611 Walker St.

HITS

Houston, TX 77002

Jessica.Bacorn@houstontx.gov

IP Address: 204.235.229.249

## Record Tracking

Status: Original

3/24/2025 12:25:31 PM

Holder: Jessica Bacorn

Location: DocuSign

Security Appliance Status: Connected

Pool: FedRamp

Storage Appliance Status: Connected

Pool: City of Houston IT Services

Location: Docusign

## Signer Events

### Signature



Signature Adoption: Uploaded Signature Image  
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Viewed: 3/24/2025 4:11:03 PM

Signed: 3/24/2025 4:11:17 PM

## Electronic Record and Signature Disclosure:

Not Offered via Docusign

Richard Vella

richard.vella@houstontx.gov

Assistant Director

City of Houston

Security Level: Email, Account Authentication  
(None)



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## Electronic Record and Signature Disclosure:

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### Timestamp

## Editor Delivery Events

### Status

### Timestamp

## Agent Delivery Events

### Status

### Timestamp

## Intermediary Delivery Events

### Status

### Timestamp

## Certified Delivery Events

### Status

### Timestamp

## Carbon Copy Events

### Status

### Timestamp

Martha Lake

martha.lake@houstontx.gov

Adm Coordinator

City of Houston General Services

Security Level: Email, Account Authentication  
(None)



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## Electronic Record and Signature Disclosure:

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Notary Events	Signature	Timestamp
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Signing Complete	Security Checked	3/24/2025 4:13:43 PM
Completed	Security Checked	3/24/2025 4:13:43 PM
Payment Events	Status	Timestamps